



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

FF
ANT
PT: 9
V. 2

RECEIVED LOW LEVEL





DE
JURE MARITIMO
ET
NAVALI:
OR A
TREATISE
OF
AFFAIRS MARITIME,
AND OF
COMMERCE.

IN TWO VOLUMES.

VOL. II.

The NINTH EDITION, with many valuable Additions.

By *CHARLES MOLLOY*, late Barrister at Law.

L O N D O N :

Printed for T. WALLER, opposite FETTER-LANE,
FLEET-STREET.

MDCCCLXIX.

(1769)



THE
CONTENTS
 OF THE
SECOND BOOK,

Continued.

CHAP.	Page
6. O F Avaridges and Contributions	1
7. O f Policies of Assurance - -	44
8. Of Prisage and Butlerage - -	64
9. Of Pilots, Wharfage, Primage, Average, Load- manage - - -	69
10. Of Bills of Exchange - -	76
11. Of Monies advanced by way of Bottomry, or <i>Fœnus Nauticum</i> - -	118
12. Of Impositions called Great Customs, Petty Customs, and Subsidies - -	138
13. Of Impositions subsequent, conditional, tem- porary, &c. - -	170
14. Of Scavage, Package, Portorage, Water- Bailage, Ports, Members, Creeks, the Port of <i>London</i> , and Places lawful to lade and un- lade in - -	177
15. Of Provisions and Allowance made notwith- standing the several Clauses in the Acts for the Customs - -	191
16. Of the Right of Passage, of imposing on the Persons and Goods of Strangers for Passage through the Seas - -	205

The

The CONTENTS.

The CONTENTS of the Third Book.

CHAP.	Page
1. Of Freedom, Bondage, Slavery, Exile, and Abjuration	212
2. Of Aliens, as in relation to their Estates real and personal.	227
3. Of Naturalization and Denization	241
4. Of Aliens, and Trials <i>per Medietatem</i> , where allowed and where not	258
5. Of Planters	268
6. Of Jews	279
7. Of Merchants	298
8. Of Factors	326
9. Of the Laws of Nature and Nations	334

CHAP.

C H A P. VI.

Of Averages and Contributions.

- I. *Of Goods and Merchandize, when subject to be cast over-board.*
- II. *Of the account rendered of such ejected Goods, and by whom.*
- III. *Of the antient Laws of England, in reference to such Ejectments.*
- IV. *What Goods must come into the Average, and what are exempt. The Description of Average.*
- V. *The Master discharged by such Acts, by the Common Law.*
- VI. *The Ship's Gear or Apparel, whether within the Average.*
- VII. *The residue of the Goods where tacitly obliged to answer the Average.*
- VIII. *Of Goods remaining on ship-board, spoiled by reason of ejecting of others, where subject to the Average.*
- IX. *Where Ship and Lading are both made liable to the Average.*
- X. *Of Misfortunes not subject to an Average.*
- XI. *Where the remainder of the Goods are exempted from the Average, and the Damage of the ejected Goods falls on the Master.*
- XII. *Damage to the Ship, where the Lading contributes, and the standard Rate in Contributions.*
- XIII. *The Master becomes a Captive for the Redemption of Ship and Lading, where liable to the Average, and where discharged.*
- XIV. *What Goods are subject to the Average.*
- XV. *Contribution for Pilotage, and where the remaining Goods not subject to Average.*
- XVI. *Rules general for settling the Average.*
- XVII. *Three Sorts of Goods taken at Sea.*

I. **S**HIPS being freighted and at Sea, are *Leg. Rhod. de* often subject to Storms and other Accidents, in which, by the antient Laws and Customs,

toms of the Sea, in *extreme Necessity*, the Goods, *Bracton, lib. 2. Wares, Guns, or whatsoever else* shall be thought *fol. 41. b. n. 3.* fit, may in such Extremity be flung over-board; but then the Master ought to consult with his Mariners, who if they consent not, and yet the Storm and Danger continues, the Master may command, notwithstanding, the casting over-board what he shall judge most fitting for the common Safety of the rest. So likewise Goods coming from infected Towns or Places may be cast over-board; and *49 E. 3. fol. 15.* if an Action be brought at *Common Law*, the Defendant may justify the same by pleading the special Matter.

Leg. Oleron, cap. 8. If there be a *Super-Cargo*, a Request ought to be made to him to begin first; but if he refuses, the Mariners may proceed.

Leg. Consolat. del Mere. II. If the Ship so fortunes as to out-weather the Storm, and in Safety arrives at her Port of Discharge, the Master, and most of the Crew, must swear that the Goods were cast over, for no other Cause but purely for the *Leg. Wisbicens. Safety of the Ship and Lading.* The Custom of clearing of that Point, varies according to the several Countries or Places they arrive at.

Where Goods are laden above the *Overlope*, or forbidden Goods be transported; if such Goods happen to be the Cause of any Danger or Damage, the Master shall bear the Loss; also he may be prosecuted Criminally.

Leges Guliel. 1. III. King William the Conqueror, and Henry *3. H. 1. c. 98.* the First, made and ratified this Law concerning Goods cast over-board by Mariners in a Storm, in Imitation of the antient *Rhodian Law, De jact.*

Selden ad Eadmerum, & tis de hoc non potes me implacitare, nam licet al- *Notæ & Spici-* *feri damnum inferre ob metum mortis quando pe-* *degium, f. 183.* *riculum*

ritulum evadere non potest. Et si de hoc me mescet, Weelock de qd' ob metum mortis nil fecisse de comespriorari. Pris. Anglo- Et ea quæ in navi restant dividantur in communi rum legibus, secundum catalla, & si quis jecerit catalla extra sol 167. navim quando necessitas non exegerit, ea restituat.

IV. The Ship arriving in Safety, the remainder must come into the *Average*, not only those Goods which pay Freight, but all those that have obtained Safety and Preservation by such *Ejection*; even Money, Jewels and Clothes, and such like, are not exempted. Leg. 1. & 2. ad leg. Rhod. & leg. Cliron.

But those Things which are borne upon a Man's Body, Victuals, and the like, put on Ship-board to be spent, are totally excluded from the Contribution.

In our Time, we do not remember ever to have met with any Regulation of a general *Average*, where the Apparel and Jewels of Passengers were brought into the Contribution, as it is a common Rule that what pays no Freight pays no *Average*.—It is customary in *London*, and most other Countries, for the Preservation of whatever Gold, Silver or Jewels pay Freight in Merchant Ships, to contribute to Jettison for their full Value; for the Masters being obliged by all Sea Laws to throw out, in case of Need, what is heaviest and of least Value, and the Worth of such precious Commodities being known, the Care of them will be increased in Proportion to their Worth, to prevent their being thrown over-board, promiscuously with other things: And hence their Preservation redounds to the common Benefit. There is a Difference, nevertheless, when these rich Wares come by King's Ships, or Packet Boats, as such Vessels never pay nor receive any *Average*. The Reason is; in Goods belonging to his Ma-

jeſty, all his Subjects in general are concerned; wherefore for any particular Loſs of them no particular Contribution is neceſſary, becauſe it is ſupplied by the general Contribution of the whole Community. *Mag. Inſur.* 62, 63.

Leg. Wiſbicens.
Art. 20, 21.

The Maſter ought to be careful, that only thoſe things of the *leaſt Value* and *greateſt Weight* be flung over-board.

Johannes Lacinus, l. 2.
c. 7. de Jactu,
& 8. de Contributions.

In the rating of Goods by way of Contribution, this Order is obſerved: If they chance to be caſt over-board before half the Voyage be performed, then they are to be eſteemed at the Price they coſt; if after, then at the Price as the reſt, or the like, ſhall be ſold at the Place of Diſcharge.

The Sea Laws of trading Countries differ greatly in fixing the Prices, at which Goods thrown over-board ſhall be made good, and for what Value thoſe ſaved are to contribute. According to the old Laws in the *Conſolato del Mare, Cap. 95.* the Statutes of *Genoa, Lib. 4. Cap. 17.* the Ordinances of *Rotterdam, Stockholm* and *Copenhagen*, if the Accident which occaſioned the general Average happened before half the Voyage was performed, the Jettifon is to be eſtimated at the Price it coſt; but if after, then at the Price which the reſt, or ſuch like Goods ſhall be ſold for at the Place of Diſcharge, Freights, Duties, and ordinary Charges deducted. But the new Ordinance of *Amſterdam*, in 1744, ſeems to differ ſomething from this Cuſtom, ſaying, that only in Caſes of Detentions and Ransoms, the Contribution ſhall be made in thoſe two different Manners of Valuation. The Ordinance of *Antwerp*, in 1563, by *Philip 2.* the *Recapilation de las Leyes de Indias*: the old Statutes

Statutes of *Hamburg*, of 1603, the Ordinances of *Lewis XIV.* and of *Conigsburgh*, all agree, that the Goods saved and lost shall be rated at the Market Price which those saved sell for; and a Contribution be made accordingly, after deducting Freight and Charges. But the new Ordinance of *Hamburg*, in 1731, deviates from their former Statutes in this Particular, that in Cases of general Average, the Goods shall be estimated according to their Invoice, with the Addition of all Charges except Premium of Insurance. Now this Difference naturally gives rise to the following Question, *viz.* which is the justest way, to reckon the Goods according to their Value at the Place they came from, or according to their Value at the Place where they are landed? In answer, we think there is no manner of Doubt, but that if the Ship arrived in Safety at her destined Port, both the Goods thrown over-board, and those delivered, ought to be valued at the Price they might have yielded, or did yield there, whether the Jettison was made before they came half the way, or after: For if the Goods saved by this Jettison arrived at the Place they were destined for, and there produced double what they cost, it would be unreasonable, that one half of such Produce should contribute nothing to what was cast away: Nor would it, on the contrary, be reasonable to make the Goods saved (if they came to a losing Market) pay for more than they produced; or suppose they were such as had suffered by their own perishable Nature, what reason could there be, to make them contribute to the Value of their Cost? It appears by *Mahnes's Lex Mercatoria*, Cap. 26, that this Dis-

tion was likewise observed in *England* in 1622, (the Time in which he wrote) of rating the Goods at prime Cost, if, the Jettison happened before half the Voyage was performed; and if after, at the Price that the rest, or like Goods, sold for at the Place of Discharge. An Instance happened lately, wherein the Concerned agreed, that the Goods saved, and those thrown over-board, should be rated at first Cost. As there is no Law in *England* that positively directs what Method is to be observed in these Cases, the Insurers, as well as the Insured, are bound by the Determination of Referees. *Mag. Insur.* 59.

The Person (whose Goods have been cast) is to be careful to have the same estimated before the Ship do discharge, wherein the Master ought to be Assistant.

Average, in the Merchants Law, is used or taken for a certain Contribution, that Merchants and others do proportionably make towards their Losses who have their Goods cast into the Sea for the Safeguard of the Ship, or of the Goods and Lives of them in the Ship, in the time of Tempest; and this Contribution seems to be so called, because it is proportioned after the Rate of every Man's Average or Goods carried. It is derived from the Word *Averia*, *Cattle*.

Whatever the Master of a Ship in Distress, with the Advice of his Officers and Sailors, deliberately resolves to do for the Preservation of the whole, in cutting away Masts or Cables, or in throwing Goods over-board to lighten his Vessel, which is what is meant by Jettison or Jetson, is in all Places permitted to be brought into or gross Average, in which all concerned in Ship, Freight and Cargo,

CHAP. VI. AND CONTRIBUTIONS.

7

Cargo, are to bear a proportionable Part of what was so sacrificed for the common Good; and it must be made good by the Insurers in such Proportions as they have underwrote.

Mag. Insur. 55. Self. 53.

Goods are shipped in *England*, and a Tempest ariseth, the Passengers, for saving their Lives, cast them over-board, and another *Engl-lish* Ship takes them, the Owners bring *Trover*, it lies because delivered upon the Land.

It is lawful for Passengers to cast Goods over-board out of a Ferry-boat, in Case of a Tempest, for Preservation of their Lives: So if the Ferryman surcharge the Boat with Goods, the Owners of the Goods shall have their Remedy against the Ferryman in this Case of a Surcharge, but not in the other Case.

V. As this Law doth take care that this common Calamity should be borne by all the Parties interested by a general Contribution, so the *Common Law* takes notice of the Misfortune, and makes Provision to indemnify the Master; and therefore if the Party, Owner of such *ejected* Goods, shall bring an Action against the Master or Owners of the Vessel, the Defendant may plead the special Matter, and the same shall bar the Plaintiff.

VI. But if the Ship's Gear or Apparel be lost by Storm, the same is not within the *Average*, but is accounted like unto a Workman breaking or spoiling his Tools; except in the avoiding of a Danger, as the flinging the Mast over-board, or the slipping the Tow Anchor or Boat.

Goods brought secretly in the Ship against the Master or Purser's Knowledge, if ejected, no Contribution is to be had.

*Leg. 1. del.
Mer. exempt.
Et leg. Si non
fortem de
cond. in de.*

VII. As the *Common Law* looks upon the Goods and Cargo as a Pawn or Pledge for the Freight, so the *Marine Law* looks upon them likewise as a Security for the answering the *Average* and *Contribution*, and that the Master ought not to deliver the Goods till the Contribution is settled, the same being tacitly obliged for the one as well as the other.

Ad Leg. Rhod. l. 2. Si non conservatis.

*Leg. Navis 4.
ad Leg. Rhod.
And Vinius's
Commentary
fol. 235.*

VIII. If through the rifling of the Ship, or the casting or unlightning the Ship, any of the remaining Goods are spoiled, either with Wet or otherwise, the same must come into the Contribution for so much as they are made worse.

*Leg. 9. §. 3.
ad exhibit.*

IX. If it falls out that a Ship entering into a Port or Channel, cannot make way, and there be a lightning or disburdening of the Ship, then the Contribution falls two Parts to the Lading, and one third to the Ship, except the Ship surpass in value the Lading, or that there is some bad Quality in the Ship itself.

*L. 1. vers.
quod convenit
depos.*

But to prevent that ambiguous Question, if the Party covenants that the Goods shall be delivered at the Port covenanted and appointed, then Condition makes Law.

So for the *Pilot's Fee* and rising of the Ship off Ground when there is no Fault in the Master.

*Leg. quemad-
modum parag.
Si navis ad
leg. Aquilæ.*

X. If two Ships happen to encounter and cross each other, and the Crew swear their Innocency, Contribution must be made by a just Equality; but if one perishes, as there can be no Proportion of the Loss, so no Contribution. The Reason given is, for that otherwise a Skipper might on purpose set an old weak Ship against a strong Ship, and by that

that Means hedge himself into a Contribution and Recompence. However, this bars *Fed. leg. 18.* not the Owners from bringing their Action *H. 6. num. 52.* against the negligent Master, by which Means *3 Inst. 146.* he may *recoop* himself in Damage, if it happens *Goodwin v. Tompkins, Noy 148.* at Sea, the Action by the *Civil Law* is called *Legis Aquilæ.*

If such a Misfortune happens in the Night at Sea, the Party, if he will compleatly arm himself for his Recovery, ought to prove, that he made out Light or Fire, or otherways gave Notice by crying or calling out.

XI. If it falls out in the Ship or Vessel, *Lust Sernus. §. 27. & Si* by the indiscreet Stowing or Lading thereof *23. ad leg. Aquil.* above the Birth-mark, that such *Ejection* happened, in that Case it has been used by the Marine Laws no Contribution to be made, but Satisfaction is to be answered by the Ship, Master, or Owners.

If Salt or Corn be laid loose, or in an heap by divers Persons in one Ship, without Distinction, and the Master delivers to any of them their due Share or Quantity; but before the rest receive their Share or Measure, the remaining Salt or Corn waxes or loses, those that had the good Fortune to have their Shares, shall enjoy it without any Contribution to the other Partners. *Lex Mercat. 110.*

XII. If to avoid the Danger of a Storm, *Ad leg. Rhod. leg. 2. §. Si Conservatis.* the Master cuts down the Masts and Sails, and they falling into the Sea, are lost, this Damage is to be made good by Ship and Lading *pro rata*: Otherwise if the Case happens by Storm or other Casualties.

No Contribution is to be paid in Case one Ship strike against another whereby Damage happens, but full Satisfaction is to be answered the Merchant in Case of Fault or Mis-carriage

OF AVERAGE Book H.
 carriage in either; or an equal Division of the
 Damage, in Case it happens by a Casualty,
 as above.

*F. de leg. Rhod.
 leg. navis
 const. leg. na-
 vis ad leg.
 Rhod. de jactu.
 Moor 297.*

If a *Lighter* or *Skiff*, or the Ship's Boat,
 into which part of the Cargo is unladen for
 the lightning of the Ship, perish, and the
 Ship be preserved, in that Case Contribution
 is to be made; but if the Ship be cast away,
 and the *Lighter*, Boat, or *Skiff* be preserved,
 there no Contribution or Average is to be
 had, it being a Rule, *No Contribution but
 where the Ship arrives in Safety.*

If the Ship after having made Jettison, or
 cut away her Cables, Masts, &c. at one Place,
 is stranded at another, each concerned must
 bear his own Loss, or remain possessed of
 what is saved of his Property. For Instance:
 A Master bound for *Cadiz*, is obliged by a
 Storm in the *Downs* to cut away two Cables,
 and get to Sea; by which Means he cleared
 his Ship from the great Danger he was there
 exposed to: But he afterwards had the Mis-
 fortune to run his Ship ashore near *Plymouth*,
 where the major part of his Cargo was saved.
 In this Case the Owners have no Right to
 demand, that the Proprietors of the Goods
 saved shall contribute towards the Cables and
 Anchors left in the *Downs*, notwithstanding
 the imminent Danger of losing the Ship on
 the *Goadwin* Sands (where there was no pro-
 bability that any thing could be saved) which
 could only be guarded against by the Method
 taken of cutting away the two Cables. From
 hence it follows, that if nothing had been
 saved of the Cargo, and the Cables and An-
 chors had afterwards been recovered, they
 would remain the sole Property of the Own-
 ers of the Ship, at least till the Proprietors
 of

of the Goods had actually paid for, or contributed towards the Loss of these Cables and Anchors. This is an old Law, and the Custom of many Places (1). If a deep-loaden Ship be obliged to take out a part of her Cargo, previous to her passing some Shoals or Flats, which, without such Lightning, hinder her getting to her destined Port, and the Lighters or Boats, in which the Goods of such Cargo are put, should perish, the Owners of the Goods that remain are to bear an equal Proportion of the Loss; but if the Ship should be lost, and the Lighters saved, the Owners of the Goods so preserved shall not only remain possessed of those Goods, but also shall contribute nothing towards the Loss of the Ship, and what was in her. This Difference is founded on this, that lightning of this Ship was in Consequence of a deliberate and voluntary Determination, and for the Good of the whole, whereas the Lighters being saved, and the Ship lost, was owing to an Accident, no ways proceeding from a Regard to the whole, but a Case similar to the saving Goods lying nearest at hand when a Ship is ruin ashore.

Let us go still farther and suppose, that a Ship running on a Bank, throws overboard all her heavy Stores, and Part of her Cargo, by which Jettison she gets clear, and returns to Sea, yet proves so leaky, that she is obliged to make for, and take Shelter in the next Harbour, where, upon Examination, she is found in so bad a Condition as not to be re-

(1) Laws of *Wibby*, Art. 55. Statutes of *Hamburg* in 1603. *Malynes's Lex Mercat.* 1622. Cap. 25. Ordinance of *Antwerp* in 1563. Ordinance of *France* in 1681. Ordinance of *Rousterdam* in 1721.

paired, and therefore is condemned as unfit to proceed on the Voyage. In this Case, notwithstanding her Loss proceeds from her having been ashore, yet as she got clear by the aforesaid Jettison, and the remainder of the Cargo escaped, and arrived safe in Harbour, that which was so saved must contribute to the Loss of what was thrown overboard. But yet whatever Damage the Ship sustained by her running aground, or the Damage or Loss any particular Goods suffered by this unhappy Accident, must be borne by the Ship's Owners, and by the Owners of the Goods, without any Pretence of Indemnification from the Cargo saved, their Redress being only against Insurers. *Mag. Insur.* 57.

In the Collection intituled *Consolato del Mare*, which contains some old Laws of *Barcelona*, partly taken, as *Verwer* shews, from those of *Wisby*, it is said, *Cap.* 94. "That in Case of a Jettison, the Ship shall contribute for half of its Value : But (*Cap.* 96.) if the Master receives Freight for his whole Cargo, the same shall be included in the general Contribution."

In the Ordinance of *Philip II.* made at *Antwerp*, 1563, it is said, "That the Owners of the Cargo shall have the Option to make the Ship contribute either for her real Value, or for her whole contracted Freight ;" which, as *Verwer* affirms in his Annotations upon this Ordinance, *p.* 118. hath been practised in the Northern Parts of *Holland*, ever since the most antient of their own Sea Laws have been known, which are the Decrees or Judgments of the City of *Dam* or *Damme*, collected according to the afore-mentioned Author's Conjecture, before the Year 1300, and

CHAP. IV. AND CONTRIBUTIONS.

13:

and still in Use, as appears by the Ordinance of *Rotterdam*.

By the *Recopilacion de Leyes de las Indias in Spain*, and the Statutes of *Genoa*, the Ship contributes both for the whole of her Value and Freight. At *Leghorn* the Custom is, that the Ship shall contribute for one half of her Value, and one third of her Freight.

By the Ordinance of *Lewis XIV.* both Ship and Freight are to contribute for one half.

The Ordinances of *Coningsberg*, *Hamburg*, and *Copenhagen*, all agree, that the Ship is to contribute for the whole of her Value and Freight; which Value is well explained by the said Ordinance of *Hamburgb*, which directs, that the Value of the Ship shall be no other than she was really worth in the Condition she arrived; and that from the Freight a Deduction shall be made of the Men's Wages, Pilotage, and such other Charges, as are distinguished there by the Denomination of *petty, ordinary, or common Average*, of which it is customary every where for the Cargo to bear two thirds, and the Ship one. The Difference of the Ordinances of several States in the Manner of settling the Ship's Contribution, is easily reconciled; for it proceeds from the same Grounds, *viz.* the Impossibility of employing a Ship in any Voyage without Wear and Tear, and consequently losing of that Value she had when she commenced it; and the Supposition that one half, or one third of her Freight, would be expended in paying Mens Wages and other Charges. The above mentioned Law of *France*, that the Ship shall contribute for a Moiety of her Freight as well as her Value, is to be understood only of the gross

gross Freight. The Ordinance of *Cönningsberg*, mentioned above, is defective both in this Point and the Method of valuing the Vessels, and wants Explanation. The right and just way of calculating is to be found in the last named modern Ordinance of *Copenhagen*, which enacts, that the net Freight, and full Worth of the Ship (after making proper Allowances for what she diminished in Value by the ordinary Course of the Voyage, and the extraordinary Accident that occasioned the general Average) shall contribute their Share or Part in a general Average. *Maz. Instr.* 57.

Leg. Rhod. de jactu, l. 2. Si navis à Piratis. XIII. If a Ship happens to be taken, and the Master, to redeem the Ship and Lading out of the Enemy's or Pirate's Hands, promises them a certain Sum of Money, for Performance whereof himself becomes a Pledge or Captive in the Custody of the Captor; in this Case he is to be redeemed at the Costs and Charges of the Ship and Lading, and Money, if there be any in her, are contributory according to each Man's Interest for his Ransom.

*Moor 297.
Hicks versus
Palington.*

So where a Pirate takes part of the Goods to spare the rest, Contribution must be paid.

But if a Pirate takes by Violence part of the Goods, the rest are not subject to Average, unless the Merchant hath made an express Agreement to pay it after the Ship is robbed.

Grot. de introd. jur. Holl. part 29.

But if part of the Goods are taken by an Enemy, or by Letters of Mart and Réprizal, *à contra.*

Sueton. jur. Naut. in the end of chap. 13.

So likewise in a Storm, if the same is done for Preservation of the remainder,

The Master may hypothecate the Ship for his own Redemption. *L. Raymond's Rep.* 22.

A Ship

A Ship was taken by a *French Privateer*, and the Master of her ransomed her for 1800*l*. (the Master having a Share in the Ship) the Mate was carried into *France* as a Hostage for this Money. Lord *Chancellor* said, the Ransom-money must be raised out of the first Profits, notwithstanding any former Mortgage of the Ship; for if there was a precedent Mortgage, what would have become of the Security if the Ship had not been redeemed: After the Ship was redeemed she performed her intended Voyage, and the Freight-money earned after her Redemption was the first Profits arising, and out of these the Ransom-money is to be satisfied. This was upon Motion. The Lord *Chancellor Cowper* said, the Insurers always paid part of the Ransom-money.

Hill. 7 Anne.
in Chancery,
Lopes and
Winter.

XIV. In Ejectment, the Master or Purser of the Ship shall contribute for the Preservation of the Ship; and also the Passengers for such Wares as they have in the Ship, be it Pearls; precious Stones, and such like; and Passengers that have no Wares or Goods in the Ship, yet in regard they are a burden to the Ship, Estimate is to be made of his and their Apparel, Rings, and Jewels, towards a Contribution of the Loss; and generally all things in the Ship, except the Victualling and Provisions of the Ship, and the Bodies of Men (unless Servants) must bear a proportionable Share in the Contribution.

The Estimate being made of the Goods lost and saved, the Price is to be set down, not for how much they were bought, but how much they might be sold for at the time when the Ejectment was made; and if any thing be flung into the Sea, and endamaged,
and

Peckeus ad leg.
Rhod. de jact.
fol. 196, 197,
198.

and afterwards is recovered again, yet Contribution is to be made only for the Damage.

XV. Contribution is to be paid for the Pilot's Fee that hath brought a Ship into a Port or Haven for her Safe-guard, (it being not the Place she was designed for) so to raise her off the Ground when there is no Fault in the Master.

Grotius introd. jur. Holl.
329. *Vinius*
and *Peckeus*
Commentaries on the
Laws of
Rhodes, fol.
236.

If a Master of a Ship lets out his Ship to freight, and then receives his Compliment, and afterwards takes in Goods without leave of the Freighters, and a Storm arises at Sea, and part of the Freighters Goods are cast over-board, the remaining Goods are not subject to the Average, but the Master must make good the Loss out of his own Purse.

The Goods which are lost are to be valued, and the Goods saved are to be estimated, which being known, a proportionable Value is to be contributed by the Goods saved, towards Reparation of the Goods *ejected*, or cast over-board.

Locinus, lib.
2. cap. 8, 9,
10, 11.

In which, regard is always had, not to what might be got by the Goods lost, but what the intrinsic Damage is by the loss of the same; the which are not to be estimated what they might have been sold for, as what they cost or were bought for.

The Custom of Places varies this *Modus* of estimating; the which is done by Merchants and Mariners indifferently nominated by the Court.

XVI. But now the Custom is general, the Goods saved and lost are estimated according as the Goods saved were sold for, Freight, and other necessary Charges, being first deducted.

And this, by what we have often seen transacted in such Affairs, seems to be now the prevailing Custom in *England*. 1 *Mag. Insur.* 59.

If

If there were Plate, Jewels, or the like, in a Trunk, Chest, Pack or Bale, at the time of their Ejection, if there be a *Super Cargo*, he ought to give Notice, by discovering of the same to the Master or Mariners, otherwise he shall be answered in the Contribution, no more than the bare extrinsick Value appeared to be: But the Assurers will hardly fare so well.

Ad leg. Rhod. §. ult. Instit. de rer. divis. & leg. 9. §. ult. de acq. rer. Dom.

If Contribution shall be settled, and the Merchant will not agree, the Master may detain the Lading, for the same is as tacitly obliged to answer that as the Freight; and if at the *Common Law* the Merchant should bring an Action, the Defendant shall bar him by pleading the special Matter.

If Goods are cast over-board, and afterwards are recovered, Contribution ceases; saving for so much as they are damnified and made worse by reason of such Ejection.

ff. ibid. leg. Navis, §. cum autem.

Note, Goods cast over-board to lighten the Ship, make no *Derelict*. 5 Co. 107. b.

Leg. 25. D. de prob. leg. falsus §. Si jac-tum D. de furt.

And though such Necessity seems to subject the Lading to Ejection, to prevent the Ruin and Destruction of the Persons, yet some Lading seems excepted, and therefore Cannon, and other Instruments or Provisions *consigned to relieve a City*, ought not to be flung over-board; for in such Case the Law imposeth on every Subject, that he prefer the urgent Service of his Prince, before the Safety of his Life.

Bacon's Max. fol. 17. Privilegium non valet contra rempublicam.

XVII. Goods taken upon the Sea, are of three Sorts. 1. Goods taken by Letters of Mart, by *jus Reprisaliarum*. 2. Taken from Pirates or Sea Rovers; And 3. From professed Enemies. Those Goods that are taken from Pi-

rates, are esteemed to be the just Prize or Prey to any Taker of them, so that an Account be given of them to the Admiral. If a Ship or Goods be taken from a professed Enemy, it is to be proceeded in according to the Authority whereby it was taken. But if a Ship or Goods be taken by a professed Enemy, and afterwards they are taken from him, and the same Owner claims them, they ought to be restored to him; for the Law looks upon these Goods as received, not taken, yet with some Recompence for them.

Prizes to be divided between the Captors in the Proportion the King shall order by Proclamation.

By Stat. 29 Geo. 2. cap. 34. Sect. 1. The Flag-Officers, Commanders, and other Officers, Seamen, Marines, and Soldiers, on board every Ship and Vessel of War in his Majesty's Pay, shall have the sole Property of every Ship, Vessel and Goods, which they take from the 17th of May 1756, during the Continuance of this War against France (being first adjudged lawful Prize in any Court of Admiralty in Great Britain, or in the Plantations in America, or elsewhere) to be divided in such Proportions, and after such manner, as his Majesty shall order by Proclamation.

Judge to finish the preparatory Examination, with respect to Captures, within five Days.

Monition to be issued and executed within three Days after.

By Sect. 3. The Judge or Judges of such Court of Admiralty, or other Person thereto authorized, shall, within five Days after Request, finish the usual preparatory Examination of the Persons commonly examined in such Cases, to inquire, whether the Capture be lawful Prize or not; and the usual Monition shall be issued by the proper Person, and be executed in the usual Manner, within three Days after request: And in case no Claim of such Capture be entered in the usual Form, and attested upon Oath, giving twenty Days Notice

Notice after the Execution of such Monition; or if there be such Claim, and the Claimant give not within five Days Security, to be approved of by such Court of Admiralty, to pay double Costs to the Captors in case the same so claimed be adjudged lawful Prize; then the Judge of such Court of Admiralty shall, upon producing the said Examinations or Copies thereof, and upon producing upon Oath all Papers found in such Captures, or upon Oath that no such Papers were found, immediately proceed to Sentence, either to discharge such Capture, or to condemn the same; and in case such Claim be entered and Security given; and there appear no Occasion to examine any Witnesses, other than what be then near, then such Judge shall forthwith cause such Witnesses to be examined within ten Days after such Claim made and Security given, and proceed to Sentence; but in case upon making such Claim, and the Allegation and Oath thereupon, or the producing such Papers found in such Capture, or upon the said preparatory Examinations it appear doubtful, whether such Capture be lawful Prize or not, and appear necessary to have an Examination, upon Pleadings given in by the Parties, and admitted by the Judge, of Witnesses that are remote, and such Examination be desired, then the said Judge shall forthwith cause such Capture to be appraised by Persons to be named by the Parties, and appointed by the Court, and sworn truly to appraise the same; for which Purpose the said Judge shall cause the Goods found on board to be unladen, and an Inventory being taken by the Marshal of the Admiralty, If no Claim be made within a limited time, or Security given by the Claimant, the Judge to proceed to Sentence. If Claim be entered and Security given, and Witnesses be near, Determination to be made within ten Days. If the Legality of the Capture appear doubtful, and the Parties persist in litigating, Judge to order the Capture to be appraised, and the Goods to be unloaded and lodged in Warehouses, and

Inventory
taken,

and upon Se-
curity for full
Value taken
of the Claim-
ant,

and for Costs
of the Cap-
tors,

to make Or-
der for Re-
lease of Cap-
ture to
Claimant.

Claimant re-
fusing and
Captor giv-
ing such Se-
curity, Judge
to make Or-
der for deli-
very of Prize
to Captor.

Captures to
be under the
joint Care of
the Officers
of the Cus-
toms and
Captors, till
condemned
or acquitted
there.

miralty, or his Deputy, to be put into Ware-
houses, with separate Locks of the Collector
and Comptroller of the Customs (and where
there is no Comptroller, by the Naval Officer)
and the Agents of the Captors and Claimants,
at the Charge of the Party desiring the same;
and shall, after such Appraisement, and with-
in fourteen Days after the making, such
Claim, take Security from the Claimants, to
pay the Captors the Value according to such
Appraisement, in case the same be adjudged
lawful Prize; and Security from the Cap-
tors, to pay such Costs as the Court think
proper, in case such Ship be not condemned;
and after such Securities given, the said
Judge shall make an interlocutory Order for
delivering the same to such Claimant, or
his Agents, and the same shall be delivered
accordingly.

By *Señ. 4.* If any Claimants refuse to give
such Security, the Judge shall cause the Cap-
tors to give Security to be approved of by
the Claimants, to pay the Claimants the
Value, according to the Appraisement, in
case such Capture be adjudged not lawful
Prize; and the said Judge shall thereupon
make an interlocutory Order for the deliver-
ing the same to the Captors or their Agents.

By *Señ. 5.* All such Captures brought into
any of his Majesty's Colonies in *America*,
shall, without breaking Bulk, stay there, and
be under the joint Care of the Collector and
Comptroller of the Customs (or where there
is no Comptroller, of the Naval Officers of
the Port where brought) and all the Captors
and their Agents, subject to the Directions
of the Court of Admiralty, until either the
same

same by final Sentence be discharged or condemned, or that such interlocutory Order as aforesaid be made for the delivering the same; and upon Condemnation shall, in case the same were taken by any such private Ship, be delivered unto the Captors and their Agents, to be by them disposed of as their Goods; and in case the same were taken by any of his Majesty's Ships, unto such Person, and to be so divided and disposed of as his Majesty shall by Proclamation direct.

Upon Condemnation, Prize to be delivered to the Captors.

By *Señ. 6.* If any Judge, or other Officer in any of his Majesty's Plantations or Dominions Abroad, delay the doing any thing towards condemning or discharging any such Capture within the Times herein limited, or as soon as the same ought to be done according to the meaning of this Act, every such Judge and other Officer shall for every such Offence forfeit 500*l.* one Moiety to his Majesty, the other Moiety with Costs, to such Person who shall inform or sue for the same, in any of the Courts in any of his Majesty's said Plantations, or in any Court of Record within *Great Britain.*

Judge or other Officer in America guilty of Neglect or Delay forfeits 500*l.* with Costs.

By *Señ. 7.* There shall not be paid unto or among all the Judges and Officers of such Court of Admiralty in any of his Majesty's Plantations or Dominions Abroad, for the condemning of such Capture above 10*l.* in case such Prize be under the Burthen of 100 tons; nor above 15*l.* in case the same be of that or any greater Burthen; and upon Payment of either of the said Sums, as the case requires, to the said Judge or Judges, or any of them, to be divided as he or they think fit among the Officers of such Court, such

Fees of Court on Condemnation of Prizes in America, for Vessels under 100 Tons, 10*l.* for all above 15*l.* Upon Payment of the Fees, Judge or Officers liable to the above Penalties for

Neglect or
Delay of Du-
ty.

Judges and Officers shall be liable to the Penalties for neglecting to do their respective Duties within the Times herein limited.

Judgment of
the Court
may be ap-
pealed from.

By *Señ. 8.* If any Captors or Claimants rest not satisfied with the Sentence given in such Court of Admiralty, in any of his Majesty's Plantations or Dominions Abroad, it shall be lawful for the Party aggrieved to appeal to the Commissioners, appointed under the Great Seal of *Great Britain*, for having Appeals in Causes of Prizes; such Appeal to be allowed as Appeals to such Commissioners are now allowed from the Court of Admiralty within this Kingdom; so as the same be made within 14 Days after Sentence, and good Security given by the Appellants, that they will effectually prosecute such Appeal, and answer the Condemnation, and pay treble Costs, in case the Sentence of such Court of Admiralty be affirmed.

Appeal to be
made within
14 Days after
Sentence, and
Security to be
given to pro-
secute the
same, &c.

Execution of
Sentence not
to be suspend-
ed if the Ap-
pellant give
Security.

By *Señ. 9.* The Execution of any Sentence so appealed from, shall not be suspended by such Appeal, in case the Party appellate give Security, to be approved of by the Court, in which such Sentence is given, to restore the Ship or Effects concerning which such Sentence is pronounced, or the Value, to the Appellants, in case the Sentence be reversed.

Person who
was not in a
Party appeal-
ing to enter
his Claim.

By *Señ. 10.* In case any Person, not a Party in the first Instance of the Cause, interpose an Appeal from a Sentence given in any Admiralty Court, such Person, or his Agent, shall at the same time enter his Claim, otherwise such Appeal shall be void.

Captors
breaking
Bulk, or im-
bezzling Ef-
fects, to for-

By *Señ. 11.* If any Commander, Officer or others, break Bulk on board, or imbezzle any of the Money, Jewels, Plate, Goods, Tackle, or Apparel of such Prize, he shall forfeit treble

ble the Value of such Money, &c. as he im-
bezzles; one-third to the use of *Greenwich*
Hospital, and the other two-thirds to him-
that will sue for the same, by Action of Debt,
&c. in any Court of Record in *Great Britain*,
in which no Effoin shall be allowed.

feit treble
Value, one-
third to *Green-
wich Hospital*,
and the other
two to the
Prosecutor.

By *Stat. 12*. All Appraisements and Sales
of any Ship or Goods, taken by any of his
Majesty's Ships of War, shall be made by
Agents appointed in equal numbers by the
Flag-Officers, Captains, Officers, Ships Com-
panies and others, intituled thereunto, viz. if
the Flag Officer of any Fleet taking any such
Prize (or the Majority of such Flag Officers,
if more than one) nominate one or more
Agents, then the Captain and Commander,
or the Majority of them (if more than one)
shall nominate the like Number; and all the
other Officers, under the Degree of a Captain
and Commander, or the major part of them,
shall also nominate the like Number; and all
the Crews of the several Ships Companies of
the Fleet, or Ship's Company, and others inti-
tled thereto, or the major part of them, shall
nominate the same Number.

Appraise-
ments and
Sales of Pri-
zes taken by
the King's
Ships, to be
made by the
Agents for
Officers and
Crews.
Regulations
concerning
Agents.

By *Stat. 13*. Nothing herein shall alter any
Agreement in Writing, between the Owners,
Officers, and Seamen, of any private Ships
of War.

Not to extend
to Privateers.

By *Stat. 14*. Every Person nominated A-
gent for any Prize, or for receiving the Boun-
ty herein after granted, shall exhibit, and
cause to be registered in the High Court of
Admiralty in *Great Britain*, or in the respec-
tive Courts of Admiralty in *America*, or in
any other his Majesty's Dominions, or else-
where, where the said Prize is condemned, his
Letter of Attorney appointing him Agent;

Agents to ex-
hibit and re-
gister their
Letters of At-
torney in the
Court where
the Prize shall
be condem-
ned, on pe-
nalty of 500*l*.

and if any Person so appointed Agent neglect so to do for six Calendar Months next after Sentence of Condemnation of any Prize, for the Care of which he is appointed Agent, he shall forfeit 500 *l.* to be recovered by him who shall sue for the same, by Action of Debt, &c. in any Court of Record in *Great Britain, America*, or in any other of his Majesty's Dominions, or elsewhere; in which no Effoin, &c. shall be allowed. See 33 *Geo. 2. c. 19. Sect. 6.*

Agent appointed after Condemnation, to register his Letters of Attorney in like manner.

By *Sect. 15.* If any Agent be appointed after any Sentence of Condemnation given, such Agent shall, under the aforefaid Penalty, cause to be registered his Letter of Attorney, appointing him Agent within six Calendar Months after the Date of the said Letter of Attorney.

Agents to give notice of the time appointed for payment of the Shares.

Shares of run Men, and such as shall not be demanded within 3 Years, to be paid to *Greenwich Hospital.*

By *Sect. 16.* After the Sale of such Prize taken by any of his Majesty's Ships of War, public Notification shall be given by the Agents of the Day appointed for the Payment of the several Shares to the Captors; after which public Notification, if any Man's Share remain in the Hands of the Agents, either belonging to such Men as shall be run from his Majesty's Service, or which be not legally demanded within three Years, then such Shares so remaining in the Agents hands, or belonging to such Men as run from his Majesty's Service, shall be paid to the Use of *Greenwich Hospital.* See 33 *Geo. 2. c. 19. Sect. 1.*

Prize Goods not exempted from Customs.

By *Sect. 17.* Nothing herein shall exempt any Ships or Goods taken as Prize, and imported into this Kingdom, or any of his Majesty's Plantations in *America*, from the Payment of any Customs or Duties, or from being

ing subject to such Regulations to which the same are or shall be liable by Law.

By *Señ. 18.* All Prize Ships legally condemned, shall be considered as *British* built Ships, and be intitled to all the same Privileges with *British* Ships, and be subject to all the Regulations that *British* built Ships are subject to.

By *Señ. 19.* During the present War with *France*, the 12 *Car. 2. c. 18. Señ. 8.* shall not extend to hinder any Person from importing into *Great Britain* or *Ireland*, any of the Goods mentioned in the said Clause, in Shipping built in *Great Britain*, *Ireland*, the Islands of *Guernsey*, or *Jersey*, or in any of his Majesty's Dominions, in *Africa*, *Asia*, or *America*, or in his Possession, so as the Master and three-fourths of the Mariners navigating such Ship are *British*, or of the same Country, of which the said Goods are the Growth and Manufactures.

By *Señ. 20.* Provided that all Goods imported into *Great Britain* or *Ireland*, in Ships belonging to Foreigners, although *British* built, shall pay Aliens, and all other Duties, as if such Ships were foreign built.

By *Señ. 21.* There shall be paid by the Treasurer of the Navy, upon Bills to be made by the Commissioners of the Navy, to be paid according to the Course thereof, without Fee, unto the Officers, Seamen, Marines, Soldiers, or others on board any of his Majesty's Ships of War, or Privateers, in any Action where any Ship of War or Privateer shall be taken from the Enemy or destroyed, since his Majesty's Declaration of War against *France*, dated the 17th of *May*, 1756, 5*l.* for every Man living on board any Ship so taken or destroyed,

Numbers to
be ascertain-
ed upon
Oath;

and a Certi-
ficate to be
granted
thereof, and
produced to
the Commis-
sioners of the
Navy, with
Copy of Ships
Condemna-
tion; unless
the Ship be
sunk or de-
stroyed.
Dividend to
be made ac-
cording
to Proportion
settled by
Proclama-
tion.

Where such
Oath and Cer-
tificate can-
not be made
and had at
the first Port,
the same may
be made and

stroyed, at the beginning of the Engagement; the numbers of such Men to be proved by the Oaths of three or more of the chief Officers, or Men belonging to the said Ship of War, or Privateers of the Enemy, at the time of her being taken or destroyed, before the Mayor, or other chief Magistrate of the Port within any of his Majesty's Dominions, whereunto any Prize, or Officers or Men of such Ships destroyed, be brought, or before the *British* Consul, or Vice Consul, residing at any neutral Port to which such Prize, or Officers, or Men, are brought; and the said Mayor, &c. shall grant a Certificate thereof, without Fee, directed to the Commissioners of the Navy; upon producing which, with an authentic Copy of the Condemnation of such Ship; or if such Ship be destroyed, on producing only a Certificate from the Mayor, &c. the Commissioners of the Navy, or such Person as they appoint, shall, according to the Course of the Navy, within 15 Days, make out Bills for such Bounty, directed to the Treasurer of the Navy, payable to, and to be divided amongst the Officers, Seamen, Marines, and Soldiers on board his Majesty's Ships of War, in Proportion as by his Majesty's Proclamation directed; and amongst the Owners, Officers, and Seamen, of any private Ship of War, in such Proportion as by any Agreement in Writing directed.

By *Sett.* 22. Where such Oath and Certificate cannot be administered and granted at the first Port, whereunto any Prize, or Officers or Men are brought, such Oath shall be taken before the Mayor, or other chief Magistrate of any Port within any of his Majesty's Dominions, or before the *British* Consul, or Vice Consul,

ful, residing at any neutral Port whereunto any Prize, or Officer or Men are brought (proof being first made by Affidavit before such Person of the inability of making such Oath, and obtaining such Certificate, at the said first Port) and the Mayor, or other chief Magistrate, Consul or Vice Consul, shall thereupon grant such Certificate, which shall be effectual.

had at any other Port ; Oath being made of such inability at the first Port. Certificate granted thereupon to be valid.

By *Seft. 23.* The Bills made out for the Bounty, hereby granted to the Commanders and Men of his Majesty's Ships of War, shall be made payable to such Persons as be authorized by the Flag Officers, Captains, Officers, Ships Companies, and others intitled thereunto, as before is directed for the appointing Agents for Appraisements and Sales; the several Shares of which Captors, if not legally demanded within three Years after public Notification, and also of such as run from his Majesty's Service, shall be applied to the use of *Greenwich Hospital*. And the Bills made out for the Bounty hereby granted to Privateers, shall be made payable to such Persons as be appointed by the Owners, Officers and Seamen, of such Privateer.

Bills for Bounty-money to be paid to Agents, and divided amongst the Captors. Shares not demanded within 3 Years, to be paid to *Greenwich Hospital*. Bounty-money to Privateers, to be divided as agreed.

By *Seft. 24.* If any Ship, or Boat, taken as Prize, or any Goods therein, be proved in the Court of Admiralty, to have belonged to any of his Majesty's Subjects of *Great Britain* or *Ireland*, or any of the Dominions under his Majesty's Protection and Obedience, which were before taken by any of his Majesty's Enemies, and afterwards retaken by any of his Majesty's Ships of War, or any private Man of War, or other Vessel under his Majesty's Protection and Obedience, then such Ships, Boats and Goods, formerly belonging to such his

Ships or Goods belonging to his Majesty's Subjects taken by the Enemy, and retaken by the King's Ships or Privateers, to be restored on paying Salvage in proportion to the

time they
were in the
Enemy's
hands.

Payment of
Salvage to be
without De-
duction.

If the Ship
retaken was
fitted out by
the Enemy
as a Man of
War, Owner
to pay for
Salvage the
Moiety of the
Value.

Ships or Mer-
chandize tak-
en by Col-
lusion by Pri-
vateers for-
feited to his
Majesty, with
the Bond ;
one Moiety
to the Crown,
the other to
the Prosecu-
tor, and if so
taken by a
King's Ship,
the Captain
to forfeit
1000 l.

his Majesty's Subjects, shall be by Decree of the said Court of Admiralty restored to such former Owners ; they paying for Salvage, if retaken from the Enemy by one of his Majesty's Ships of War, one-eighth of the Value of the Ships and Goods ; which Salvage shall be paid to the Captains, Officers, and Seamen, in the said Man of War, to be divided as is directed, touching the Share of Prizes taken by his Majesty's Ships of War : And if taken by a Privateer or other Vessel, before it has been in the Possession of the Enemy 24 Hours, one-eighth of the Value ; and if it has been in the Possession of the Enemy above 24 Hours, and under 48 Hours, a fifth ; and if above 48 Hours, and under 96 Hours, a third ; and if above 96 Hours, a Moiety ; all which Payments to be made without Deduction ; and if such Ship so retaken appear to have been, after the taking by the Enemy, by them set forth as a Man of War, the former Owners to whom the same is restored shall pay for Salvage the Moiety of the Value of the Ship so restored, without Deduction.

By *Señ. 25.* In case any Ship or Goods be taken by any Privateer, through Consent or clandestinely, or by Collusion, such Ship and Goods, and the Ships Tackle and Ammunition of such Privateer, shall upon proof in the *Exchequer*, or in the Court of Admiralty, be adjudged good Prize to his Majesty ; and one Moiety shall be to the use of his Majesty, and the other Moiety to the use of such Person who shall discover and sue for the same ; and the Bond given by the Captain of such Privateer shall be forfeited to his Majesty ; and in case any such Ship or Goods be taken by any Man of War thro' Consent clandestinely ;
or

or by Collusion of the Commander, such Commander shall forfeit 1000 *l.* one Moiety to the use of his Majesty, and the other Moiety to the use of such Person who shall discover and sue for the same; to be recovered by Action of Debt, &c. in any Court of Record, wherein no Effoin, &c. shall be allowed; and such Captain or Officer shall forfeit his Employment, and be incapable of any Employment under his Majesty during seven Years; and the said Goods, &c. the Ship, Tackle, Guns, and Ammunition, so taken by Collusion, shall be good Prize to his Majesty.

By Sect. 26. No Person belonging to any of his Majesty's Ships, or to any Merchant Ship employed in his Majesty's Service, before or after Notification given by the Agents of the Day appointed for the Payment of the several Shares to the Captors, shall have any Interest in the Shares of the said Prize or Bounty-money aforesaid; but Shares of such Prize and Bounty-money shall be paid to the Use of *Greenwich Hospital*. Run Men
forfeit their
Share of
Prize and
Bounty-mo-
ney
To be paid to
*Greenwich
Hospital*.

By Sect. 27. If any Person run away from any Ship after Notification given, he shall forfeit such part of his Share of the said Prize and Bounty-money, as remains in the Agent's Hands at the time of his running away. And if they
run after No-
tification, to
lose what then
remains of
their Share in
the Agent's
Hands.

By Sect. 28. All Agents and others who sell any Prize, shall, within three Calendar Months after the Day appointed for the first Payment to the Captors, transmit unto the Treasurer of *Greenwich Hospital*, or such Person as he appoints, an Account under the Hand of such Agent, of the Produce of such Prize, with an Account of the Payment of the several Shares to the Captors, then *bona fide* paid; and all Persons authorized by this Act Agents to ac-
count to the
Treasurer of
*Greenwich
Hospital*.

Act to receive Bills for the Bounty hereby granted, all within three Calendar Months after the Day appointed for the first Payment of such Bills, transmit to the Treasurer of the said Hospital, or his Deputy, an Account under their Hands of the Payment of such Bills; and all Agents, that by virtue of this Act sell any Prize taken by any of his Majesty's Ships, or receive or dispose of any Bills for Bounty, shall, within three Calendar Months after the Expiration of three Years, make out an Account of the Produce of such Prize, and Bills for Bounty, as also of the Payment of the Shares to the Captors, with an Account upon Oath (to be taken before the Treasurer of the said Hospital, or any Person by him authorized in Writing under his Hand and Seal) of all Money then remaining in such Agents Power or Possession, and shall at the same Time deliver to the Treasurer of the said Hospital, or his Deputy, the said Accounts so attested upon Oath, with all such remaining Money, taking from the said Treasurer, or his Deputy, his Acquittance for the same.

Agents neglecting to render such Accounts and Payments, to forfeit 100 *l.* over and above the Money then in their Hands; one-third to the King, and the rest to the Hospital.

By *Stat.* 29. All Persons hereby directed to transmit the said Accounts, who neglect so to do within the time limited, or who neglect to pay over all such Money remaining in his Hands after the three Years, to be accounted as aforesaid, shall for every such Offence forfeit 100 *l.* over and above the Money then in such Agents Hands; one-third to his Majesty, and the remaining two-thirds to *Greenwich Hospital*, to be recovered with Costs, by Action of Debt, &c. in any Court of Record, in which no Essoin, &c. shall be allowed.

If there appears any Fraud in such

By *Stat.* 30. If any Fraud be willingly made in such Accounts, every Person thereof convicted,

victed, and his Aiders, shall forfeit for every such Offence, over and above the Penalties inflicted by this Act, 100 l. one-third to the Use of his Majesty, and one-third to the Use of *Greenwich Hospital*, and the other third to the Informer, to be recovered with Costs, by Action of Debt, &c. in any Court of Record, in which no Effoin, &c. shall be allowed.

Accounts, Persons concerned to forfeit 100 l. extra, one-third to the King, one to the *Hospital*, and one to the Prosecutor.

By *Secl.* 31. All Commanders of private Ships of War, or Merchant Ships having Letters of Marque, shall, upon their going into any Ports in the Plantations in *America*, be subject to the Directions and Penalties in the Laws made there to prevent carrying off Slaves without the Consent of the Owner, or other Persons, without a Ticket from the Secretaries Office.

Privateers subject to the Laws in British Colonies in going into the Ports there.

By *Secl.* 32. Nothing in this Act shall restrain his Majesty from giving such further Rules to his Courts of Admiralty for the Adjudication of Prizes, as by his Majesty, with the Advice of his Privy Counsel, shall be thought proper.

His Majesty empowered to give further Rules to the Courts of Admiralty.

By *Secl.* 33. All Offences committed by any Officer or Seaman on board any Privateer, or Merchant Ship taking Letter of Marque, during the present War with *France*, shall be punished as the like Offences are punishable on board his Majesty's Ships of War.

Offences committed on board Privateers punishable as in the King's Ships.

By *Secl.* 34. All Offenders accused of such Crimes as are cognizable only by a Court Martial, shall be confined on board such Privateer, or Merchant Ship carrying Letter of Marque, on which such Offence is committed, until they arrive in some Port in *Great Britain* or *Ireland*, or can meet with such a Number of his Majesty's Ships of War Abroad, as are sufficient to make a Court Martial; and upon Application

Crimes cognizable only by a Court Martial, to be tried by a Court Martial.

Application by the Commander of such Privateer, or Merchant Ship carrying Letter of Marque, to the Commissioners of the Admiralty, or the Commander in Chief of his Majesty's said Ships of War Abroad, the said Commissioners, or three of them, or such Commander in Chief Abroad, are to call a Court Martial for trying the said Offences.

Registers, on
Penalty of
500 l. to
transmit
yearly to the
Treasurer of
Greenwich
Hospital, Co-
pies of all
Letters of At-
torney regis-
tered in their
Courts.
Judge to af-
fix his Seal
thereto.
Agents to pay
the Expences.

By *Sett.* 35. The Register of every Court of Admiralty in any of his Majesty's Dominions, shall yearly upon the 23d of October, or within three Calendar Months after, transcribe Copies of all Letters of Attorney so registered in the said Court, to which the Judge of the said Court shall affix his Seal of Office, and then the said Register shall transmit the same to the Treasurer of *Greenwich Hospital*, to be there registered, and to be inspected by any Person *gratis*; the charges of which Copies, and affixing the Seal thereto, and transmitting the same, shall be paid by the said Agent at the time of making such Registry; and in case such Register neglect to transcribe and transmit such Copies (any Ship in that time sailing from such Port to *Great Britain*) he shall forfeit 500 l. to be recovered by him who will sue for the same, by Action of Debt, &c. in any Court of Record in *Great Britain* or *America*, or in any of his Majesty's Dominions or elsewhere; in which no Essoin &c. shall be allowed.

The Copies
to be deemed
Evidence of
the Agency.

By *Sett.* 36. Copies of such Letters of Attorney, and of Transcripts under Seal, transmitted by the said Registers of the Courts of Admiralty, and registered by the Treasurer of *Greenwich Hospital*, shall be good Evidence of the Agency of the Person to whom such Letter of Attorney is made; and shall be

be admitted to be legal Evidence in all Courts of Record of Law or Equity.

By *Stat.* 37. No Agent for Prizes or Bounty-money shall be liable to be sued, by any Person who is made run from his Majesty's Service, in the Lists to be certified of the Names of the Officers, Seamen, Mariners, Soldiers, or others on board any of his Majesty's Ships at the taking any Prize, until the End of three Months next after the Expiration of three Years limited by this Act, for the claiming of Prizes and Bounty-money, unless the Person so made run before any Action brought, obtain a Certificate of his being taken off, and the Forfeiture of his Share of such Prizes and Bounty-mones being discharged by the Commissioners of the Navy, who subscribed the said Lists, and produce such Certificate to the said Agent, and unless the said Agent, on the producing of such Certificate, refuse to pay the said Prize or Bounty-money (in case the same be payable according to the Directions of his Majesty's Declaration) within two Months after such Demand made and such Certificate produced.

Agent not liable to be sued by run Men in the King's Service, till after three Years, unless the R's be sooner taken off, and a Certificate produced.

And the Agent thereupon refuse to pay the Prize or Bounty-money.

By *Stat.* 38. It shall be lawful for the principal Officers and Commissioners of the Navy or their Officers, during the present War with *France*, to purchase, on the Account of his Majesty, all Naval Stores brought into any of the Ports of this Kingdom, by any of his Majesty's Ships on board any Ships of Neutral Nations; and the Commissioners and Officers of the Customs shall permit such Naval Stores so purchased, to be entered and landed within any of the Ports of this Kingdom notwithstanding, 12 *Car.* 2. *cap.* 18.

Commissioners of the Navy may purchase, for the King's Use, Naval Stores on board neutral Ships brought into Port by the King's Ships.

From and after 1 Sept. 1760, all Notifications of the Payment of the Shares of Prizes condemned in *Great Britain*, and from and after 1 Feb. 1761, all Notifications of those condemned in any other of the *British* Dominions in *Europe* or *America*; and from and after 25 Dec. 1761, of those condemned elsewhere, are to be inserted, &c. by the Agents, if condemned in *Great Britain*, in the *London Gazette*; and if condemned in any other of the King's Dominions, in the *Gazette* or other News-paper of the Place of public authority, and where there are none, then in one of the

By 33 Geo. 2. cap. 19. *Seft.* 1. After the first of *September* 1760, Notifications required by 29 Geo. 2. c. 34. to be given of the Payment of the Shares of Prizes taken by his Majesty's Ships, and condemned in *Great Britain*, and after the first of *February* 1761, all Notifications of the Payment of the Shares of Prizes condemned in any other of his Majesty's Dominions, in *Europe*, or Plantations in *America*; and after the 25th of *December* 1761, all Notifications of the Payment of the Shares of Prizes condemned in any other of his Majesty's Dominions, shall be published as is herein after mentioned, *viz.* if the Prize be condemned in the High-Court, or other Court of Admiralty in *Great Britain*, then the Agents appointed, in pursuance of the said Act for the Appraisement and Sale of such Prize, shall publish such Notification under their Hands in the *London Gazette*, and if condemned in any Court of Admiralty in any other of his Majesty's Dominions, such Agents shall publish such Notification under their Hands in the *Gazette*, or some other News-paper of public authority, of the Place where the Prize is condemned; and if there be no *Gazette* or News-paper published there, then in one of the most public News-papers of such Place: And all Persons publishing such Notification, shall deliver to the Collector, Customor, or Searcher of the Customs belonging to the Place where the Prize is condemned, or their Deputy; and if there be no such Collector, &c. then to the principal Officer of the Place, or his Deputy, two of the *Gazettes*, or other News-papers in which such Notifications are published; and if there be not any public News-papers in such Place, then such Persons shall give two such Notifications in writing

writing under their Hands, to the said Collector, &c. and every such Collector, &c. shall subscribe his Name on some conspicuous part of both the said Gazettes, News-papers, or written Notifications, and by the first Ship which sails after his Receipt of such Gazettes, &c. to *Great Britain*, shall transmit to the Treasurer of *Greenwich Hospital*, or his Deputy, one of the said Gazettes, &c. with his Name so subscribed, and shall keep the other with his Name thereon subscribed: And in every such printed or written Notification, the Agents shall specify their Places of abode, and the Day of the Month and Year appointed for Payment of the Shares of the Prize to the Captors: And all such Notifications, with respect to Prizes condemned in *Great Britain*, shall be published in the London Gazette three Days at least before any Share of any such Prize be paid; and all such Notifications, with respect to Prizes condemned in any other of his Majesty's Dominions, shall be delivered to the Collector, &c. aforesaid, three Days at least before any Share of such Prize be paid.

most public News-papers of the Place; and two of the said Gazettes or News-papers are to be delivered by them to the Collector or other principal Officer of the Port. And if there shall be no public News-paper, they are then to deliver two Notifications in writing, which are to be signed by the Collector, or other principal Officer; one whereof is to be transmitted by the first Ship, to the Treasurer of *Greenwich Hospital*, and to be registered there; and the other to be kept in his Custody. The Agent's Place of abode, and the Day and Year appointed for Payment of Shares, to be inserted in every Notification; and those condemned in *Great Britain*, to be published three Days; and those in other Parts, to be delivered to the Collector, &c. three Days also before Payment is made of any of the Shares.

By *Sec. 2.* All Agents appointed in pursuance of the said Act, by the Flag-Officers, Captains, Officers or Ships Companies, and others of his Majesty's Ships of War, for the Distribution of any Bounty Bills, granted by the said Act, shall publish under their Hands, in the London Gazette three Days at least

Three Days previous Notice also to be published in like manner by the Agents in the London Gazette, of the Distribution

D 2

before

tion of any
Bounty Bills.

before the Payment of such Bounty Bills, Notification of the Day of the Month and Year appointed for the Payment of such Bounty-money, and insert in such Notification the Places of their abode.

Where public Notification hath been, or shall be given of the Payment of Prize or Bounty-money, but the Day of Commencement of the Payment, and the Agent's Name and abode hath not or shall not be specified; such Agents for Prizes condemned in *Great Britain*, or for the Distribution of the Bounty-money, are on or before 25 Dec. 1760;

And for those condemned in any other of the *British* Dominions in *Europe* or *America*, on or before 1 June 1761; And for those elsewhere, on or before

By *Self*. 3. Where any public Notification hath during the present War been given before the times before-mentioned for Notifications in *Great Britain*, and other his Majesty's Dominions, of the Payment of any Prize or Bounty-money in respect of any of his Majesty's Ships of War, and the Day whereon such Payment commenced, and the Names and Places of abode of the Agents for the Appraisement and Sale of such Prizes, or Distribution of such Bounty-money was not specified; the Agents for the Appraisement and Sale of such Prizes condemned in *Great Britain*; or for the Distribution of such Bounty-money; shall, on or before the 25th of *December* 1760; and the Agents for the Appraisement and Sale of Prizes condemned in any other of his Majesty's Dominions in *Europe* or *America*, shall, on or before the First of *June* 1761; and the Agents for the Appraisement and Sale of Prizes condemned in any other of his Majesty's Dominions, shall, on or before the 25th of *March* 1762, give Notification under their Hands of the Day of the Month and Year, appointed for the Payment of the Shares of such Prize or Bounty-money, and shall specify in every such Notification their Places of abode: And all such Notifications shall be published or delivered, attested and transmitted by and to such Persons, and in such manner, as the Notifications to be published or given, after the First of *September* 1760, the First of *Fe-*

bruary

bruary 1761, and the 25th of *December* 25 *March* 1761, herein before directed.

1762, to give
Notification

of the Day and Year appointed for such Payments, and to specify also their Place of abode; the said Notification to be delivered, attested, and transmitted, as before directed.

By *Señ. 4.* If any Agent, for Appraisement or Sale of any Prize taken by any of his Majesty's Ships, or for the Distribution of any Bounty-money, neglect to publish or deliver any Notification required by the said former Act, or this Act, or not publish or deliver any such Notification for such Space before the Payment of any Part of such Prize or Bounty-money, or within the Times herein respectively limited, or in the manner herein appointed, or not specified therein the Things herein directed, he shall for every such Offence forfeit 100 *l.* over and above all Penalties by the former Act; to be recovered by Action of Debt, &c. in any Court of Record in *Great Britain* or *America*, or elsewhere in any of his Majesty's Dominions, in which no Effoin, &c. shall be allowed: And if any Collector, Customer, or Searcher of the Customs, or principal Officer, or such Deputy as aforesaid, neglect to receive or to attest, or not transmit any such Gazette, News-paper, or written Notification as is before directed, he shall for every Offence forfeit 100 *l.* to be recovered as the above Penalty.

Agents neglecting or refusing to publish or deliver any such Notification,

forfeit 100 *l.* over and above all Penalties, &c. inflicted by the former Act.

And Collectors, &c. refusing to attest or transmit the same, forfeit 100 *l.* also.

By *Señ. 5.* The Notifications in all such Gazettes, News-papers, and in writing respectively, so transmitted and attested by such Collector, &c. and registered at *Greenwich* Hospital, on proof of the Hand-writing of such Collector, &c. shall be good Evidence in all Courts of Law and Equity, that the Persons whose Names are therein specified as

The Notification so transmitted, attested, and registered, deemed sufficient Evidence of the Identity of the Agents.

Agents for the Prizes therein mentioned, are such Agents.

All Letters of Attorney exhibited by Agents, are to be duly registered by the Registers of the Admiralty Courts, within 14 Days after being exhibited,

and Transcripts thereof to be transmitted by them half yearly to the Treasurer of the Hospital,

on Penalty of forfeiting 100 l.

One Moiety of all Forfeitures to go to the Informer, and the other to the Use of the Hospital. Those given to the Use of the Hospital

By *Secl.* 6. The Register of the High Court of Admiralty, and of all other Courts of Admiralty in *Great Britain*, shall duly register, in Books kept for that purpose only, all Letters of Attorney exhibited after the 29th of *September* 1760, by any Agent for any Prize taken by any of his Majesty's Ships, or by any Agent for the Distribution of any Bounty Bills, within 14 Days after the same be exhibited; which Registry shall contain the Day of Delivery and Entry, the Dates of the Letters of Attorney, the Names and Places of abode of the Agents, the Names of the Prizes taken, or of the Ships of War or Privateers of the Enemy taken and destroyed; with the Names of the Ships by which such Prizes have been taken, or such Ships of War or Privateers taken or destroyed; and the said Register shall, on the 26th of *March* and the 30th of *September*, or within 40 Days thereafter in every Year, transmit unto the Treasurer of *Greenwich* Hospital, or his Deputy, a Copy under his Hand, of all such Entries within the preceding half Year; and if such Register neglect to make and keep such Entries, or to transmit such Copies within the Times herein limited, he shall for every Offence forfeit 100 l. to be recovered by Action of Debt, &c.

By *Secl.* 7. All Penalties given by this Act, shall be applied one Moiety to the Informer, and the other Moiety, to the Use of *Greenwich* Hospital.

By *Secl.* 8. All Penalties given to the said Hospital, by this or any other Act, may be sued for in the Name of the Master or Governor,

CHAP. VI. AND CONTRIBUTIONS.

39

vernor, or of the Lieutenant or Deputy-Governor of the said Hospital.

may be sued
for in the
Name of the

Master, Governor or Deputy Governor.

By Stat. 32 Geo. c. 25. *Sett.* 1. So much of the Clause in 29 Geo. 2. c. 34. as directs the Commissioners of the Admiralty, or any Persons by them impowered, at the request of any Owners of any Ship giving such Security as therein is mentioned, to cause to be issued forth Commissions to the Commander of such Ships for the Purpose in the said Clause mentioned, shall be repealed.

So much of the recited Clause as directs the Admiralty, upon Application and Security given, to grant Commissions to Privateers, repealed.

By *Sett.* 2. The Commissioners of the Admiralty, or three of them, or any Person by them impowered, shall, at the request of any Owners of any Ship giving such Bail and Security as is herein after mentioned, cause to be issued forth Commissions to any Persons whom such Owners nominate to be Commander; or in case of Death, successive Commanders of such Ship, for the attacking and taking with such Ship, or the Crew thereof, any Place upon the Land, or any Ship or Goods belonging to or possessed by any of his Majesty's Enemies. And such Ship or Goods so taken with such private Owners Ship, according to such Commission (being first adjudged lawful Prize in any of his Majesty's Courts of Admiralty) shall wholly belong to, and be divided among the Owners of such Ship, and the Persons on board the same assisting to the taking thereof, in such Shares as agreed on with the Owners and the Persons intitled by such Agreements; and neither his Majesty or any Admiral, or any Person other than the Owners of such Ship, be-
ing

Admiralty to grant Commissions, upon Owners, &c. giving such Bail and Security as is herein after mentioned.

Prizes to belong solely to, and be divided among the Owners and Captors, as shall be agreed between them,

reserving only the Customs and Duties payable

by Act 29
Geo. 2.

ing the Captor of such Prize Ship or Goods, and the Persons claiming under them, shall be intitled to any Share thereof (except as to the Customs and Duties.)

No Commis-
sion to be
granted to
Vessels, un-
der 100 Tons
Burthen, 10
Guns and 40
Men;
unless the
Admiralty
shall think
fit; the
Owners giv-
ing Bail and
Security as
herein after
mentioned.

By *Sett.* 3. No such Commission shall be granted to any Person by Virtue of this Act, unless the Ship for which the same is granted, in *Europe*, be of the Burthen of 100 Tons, and carry ten Carriage Guns, being three Pounders, and 40 Men; or unless the Commissioners of the Admiralty, or three of them, or any Person by them impowered, think fit to grant the same to any Ship of inferior force or burthen, the Owners giving such Security as is after mentioned.

Admiralty
may revoke,
any former or
future Com-
missions.

By *Sett.* 4. It shall be lawful for the Commissioners of the Admiralty of *Great Britain*, or any three of them, to revoke, by order under their hands, any Commission issued to any Commander of any Ship, either by Virtue of the said Act of 29 *Geo.* 2. c. 34. or this Act.

Of which
Notice is to
be forthwith
sent to the
Ship's Own-
ers, Agents
or Sureties.
Times limit-
ed for Order
of Revocati-
on to take
Place, viz.
If the Vessel
be in the
Channel;
or Northern
Seas;

By *Sett.* 5. The Secretary of the Admiralty shall, with all convenient speed, after any such Commission revoked, cause Notice thereof to be sent to the Owners or Agent or Surety, or some of them, of the Ship described in such Order of Revocation, and in case such Ship be in the Channel, the said Order of Revocation shall be effectual to supersede the said Commission, at the Expiration of 20 Days from such Notice, or sooner, if Notice be given in Writing by the Secretary of the Admiralty to the Commander thereof; and in case such Ship be in the Northern Seas, at the Expiration of 30 Days; and in case such Ship

Ship be to the Southward of *Cape Finisferre*, if to the South of *Cape Finisferre*, or in the *Mediterranean*, at the Expiration of six Weeks; and in case such Ship be in *North America*, or the *West Indies*, at the Expiration of three Months; and in case such Ship be in the *East-Indies*, at the Expiration of six Months: And any Commander or Owners, Agent or Surety of such Ship whereof such Commission is so revoked, may complain thereof to his Majesty in Council, within 30 Days after the Secretary of the Admiralty causes Notice to be given; and the Determination of his Majesty in Council, touching every such Complaint, shall be final.

Complaint may be made to the King in Council of such Revocation.

The Councils Determination to be final.

By *Sett.* 6. In case such Order of Revocation be superseded, such Commission shall be deemed to have continued in Force; and all Prizes taken by Virtue thereof shall belong to such Owners and Captors, as if such Order of Revocation had not been made.

And if the Order shall be superseded the Commission to stand good.

By *Sett.* 7. No Person shall be liable to be punished for doing, before he has received personal Notice of such Order of Revocation, any thing which he might have lawfully done under such Commission, in case such Order of Revocation had not been made.

None liable to Punishment, before personal Notice received of such Order of Revocation.

By *Sett.* 8. Before the granting any Commission in pursuance of this Act, such Bail and Security shall be taken as usual; and previous to the taking of such Security, the Persons who propose to be bound shall make Oath before the Judge of the Admiralty of *England*, or his Surrogate, or other Person lawfully commissioned, that at the time of their being sworn they are respectively worth more Money than the Sum for which they are

Usual Bail and Security to be taken;

the Parties making Oath of their Qualification,

are

and the Marshal satisfy-
ing himself as
to the Suffici-
ency thereof.

are then to be bound, over and above all their just Debts: And the Marshal of the Admiralty, or his Deputy, or the Person so commissioned, is to make Inquiry into the Sufficiency of such Security, and make a report thereof to the said Judge; or his Surrogate, before any such Commission be granted.

Persons ap-
plying for
Commissions,
to make Ap-
plication in
Writing, and
set forth a
Description
of the Vessel,
&c.

By *Sett.* 9. Every Person applying to the Admiralty to obtain any Commission in pursuance of this Act, shall make such Application in Writing, and therein set forth a Description of the Ship for which such Commission is requested, specifying the Burthen, and the Number and Nature of Guns, to what Place belonging, and the Names of the principal Owners, and the Number of Men to be put on board (all which shall be inserted in every Commission;) and every Commander of a private Ship of War shall produce such Commission to the Collector or Customer, or Searcher of the Customs, at the Port from whence such Ship is first fitted, or to their Deputies: And the said Collector, &c. shall as soon as may be, without Fee, examine such Ship, so as to ascertain the Burthen thereof, and the Number of Men, and Number and Nature of Guns: And if such Ship be found of such Burthen, and manned and armed according to the Description inserted in such Commission, or be of a greater Burthen or Force, then such Collector, &c. shall, upon the Request of the Commander, give a Certificate thereof under his Hand *gratis*; which Certificate shall be deemed a necessary Clearance, before such private Ship be permitted to sail; and if the Commander depart with such Ship from such Port of Clearance, before he hath received such Certificate, or depart

the Particu-
lars thereof
to be inserted
in the Com-
mission;
which Com-
mission shall
be produced
to the Collec-
tor or other
Officer of
the Port,
who is to ex-
amine the
Ship, and see
how far she
agrees, in all
respects, with
the said De-
scription;
and if she
agrees there-
to, or be of a
greater Force
or Burthen,
is to grant
a Certificate,

depart or proceed upon a Cruize, with a Force inferior to the Force specified in such Commission, or required by this Act, the Commission for such Ship shall from thenceforth be void; and the Commander so offending, being convicted before any Court of Admiralty, shall be imprisoned for such Space as the said Court shall direct, not exceeding one Year for one Offence.

which shall be a Clearance to such Vessel.

Penalty of departing without such Clearance, or with a Force inferior to that

specified in the Commission.

By *Sett.* 10. If any Collector, or Searcher of the Customs, or their Deputies, grant a Certificate for any Ship, not of the Burthen or Force specified in the Commission, or of greater, he shall forfeit his Office, and be forever incapable of holding any Office in the Customs, and shall also forfeit 100*l.* to be recovered by any Person who shall sue for the same, by Action of Debt, &c. in any Court of Record at *Westminster*, one Moiety to be paid to the Informer, and the other Moiety to the Treasurer to the Corporation for the Relief of sick and disabled Seamen, and of the Widows and Children of such as be killed or drowned in the Merchants Service, for the Use of such Corporation; or where such Forfeitures be incurred in any of the Outports, in which a Corporation is or shall be established for the Purposes aforesaid, the Moiety of such Penalty shall be paid to the Trustees for the Use of that Corporation.

Collector, &c. granting a false Certificate,

to forfeit his Office and 100*l.*

Recovery and Application thereof.

By *Sett.* 11. The number of Tons so to be certified, shall be ascertained according to the Rules in 8 *Ann.* c. 12. *for making a Bason at Liverpool; the Rules are, that Ships shall be measured by taking the Length of the Keel as she treads on the Ground; and the Breadth to be taken within Board by the midship Beam from Plank*

Tonage to be ascertained according to the Rules prescribed by Act 8 *Ann.*

Plank to Plank, and half that Breadth for the Depth, then multiply the Length by the Breadth, and the Product by the Depth, and divide by ninety-four.

C H A P. VII.

Of Policies of Assurance.

- I. *Assurances, by whom first introduced.*
- II. *Assurances, the Nature of them.*
- III. *How esteemed of by Law.*
- IV. *The various Ways of ensuring, and on what.*
- V. *Assurance, when esteemed most dangerous, and of fraudulent Policies.*
- VI. *Of the Receipt of Premio, and the Custom of Abatement on Losses.*
- VII. *Policies, that now ensure against all the Accidents of Heaven and Earth.*
- VIII. *A Ship insured generally, whether the same includes the Cargo, and whether it is necessary in the Policy to mention the particular Goods.*
- IX. *Cases upon Assurances.*
- X. *When the Policy is discharged by Deviation.*
- XI. *Goods insured in one Ship, are afterwards in the Voyage put into another, the second miscarries, whether the Assurers are made liable.*
- XII. *A Man ensures more than the Value of the Cargo, the Custom in such a Case when usurious.*
- XIII. *A Ship is insured from one Port to another, and there to be landed; the Cargo after Arrival is sold, and before landed is burnt, whether the Assurers shall be made answerable.*
- XIV. *A Ship insured from one Port to (blank) being in Time of War taken, whether the Assurers shall answer.*
- XV. *Of the Assured's renouncing after a Loss; and what Operation the same has by Custom.*

In vita Claud. Caesar. lib. 25. cap. 18.

I. IT is conceived by Suetonius, that Claudius Caesar was the first that brought in this Custom

Custom of *Assurance*, by which the Danger and Adventure of Voyages is divided, repaired and born by many Persons, who for a certain Sum, by the *Spaniards* called *Premio*,^{* Leg. 1. ff. qui assure Ships or Goods, or both, or a Proportion, according as the Policy is *} *Satisd. cog. Grotius lib. 2. cap. 12. §. 3.*

II. By 43 *Eliz. c. 12.* An Office of *Assurance* was erected for deciding of Differences arising upon Policies of *Assurance* in *London*; and a Court was to be held for that Purpose, by Virtue of a standing Commission issued out by the Lord Chancellor to the Court of Admiralty, the Recorder of *London*, two Doctors of the Civil Law, two Common Lawyers, and eight Merchants; which Commissioners were to meet weekly, and to have Power to summon and examine Witnesses, and hear and determine all Causes in a summary Way, subject to appeal to the Lord Chancellor, &c. And by Stat. 14 *Car. II. c. 25.* several additional Privileges were granted to this Court, which was a Court of Equity, as well as of Law, but now there is no such Court in Being, and Causes of this Nature are tried in the ordinary Courts.

By 6 *Geo. I. c. 18.* His Majesty was empowered to grant two Charters for Assurance of Ships and Merchandize, &c. and to incorporate the Adventurers, in Consideration of a large Sum of Money by them to be advanced.

III. *Indebitat Assumpsit pro premio*; upon 3 *Keb. 575.* a Policy of *Assurance* upon such a Ship, the 2 *Levinz. 153.* Defendant demurred specially because he did *Fovvle v. Pin-* not shew the Consideration certainly what the *sacho.* *Premium* was, or how it became due, *sed non allocat*^o for it is as good as *Indebitat. pro quodam Salario*, which hath been adjudged good.

If

If the Person whose Name is used in the *Affurance*, be in Time of War taken to be no Friend to the State, there is danger to pay the *Affurance*; if after the Subscription of the Assurer, the Goods should be arrested and made forfeited, to answer the same to the Prince, as it often happens.

Lex Mercat.
109.

If Goods are stolen or embezzled on Ship-board, the Master not the Assurer is responsible. So if the Goods be lost in default of the Pilot.

Assurance for
12 Months,
how to be
construed.

Policy of *Assurance* to warrant a Ship for twelve Months; the Ship did not perish within the time of twelve Months, being accounted according to the Months of *January, February, &c.* but within twelve Months reckoning twenty-eight Days to the Month, resolved that the Policy was not forfeited; cited in Sir *Woolaston Dixey's Case*, 1 *Leon*, 96.

Leg. 4. 5. D.
de Naut. fan.

IV. *Assurances* are of various sorts, some being to places certain, others general: Those that are made to places certain, are commonly upon Goods laden or to be laden aboard outward, and until the same Adventure shall be laid ashore at such a Port.

Or upon Goods laden or to be laden homeward in such a Ship till the Adventure shall likewise be landed.

Johannes Locinius, l. 2. c. 5.
§. 5, 6.

Or else upon Goods out and in, with liberty to touch at all Ports as are mentioned in the Policy.

So likewise on Ships that go trading Voyages, as round to *Cadiz*; and that it shall be lawful after the Ship's delivery there, to take in at the same Port another Cargo, and with that proceed to the *West-Indies* or other parts, and back again to *Cadiz*, and from thence to *London*; this Policy being general and dangerous,

gerous, seldom procures Subscriptions, or at least very chargeable ones.

As Goods and Merchandize are commonly *Sauter. p. 3.* insured, so likewise are the Ships Tackle and *num. 13. seq.* Furniture; but in regard there seldom happens a Voyage but somewhat is missing or lost, *43. seq.* the *Premio* commonly runs higher than for Merchandize.

Assurances may be made on Goods sent by Land, so likewise on Hoys, and the like, *Liste ver Sedgwick. Mich.* and may be made on the Heads of Men; as *29 Car. 2. in B. R.* if a Man is going for the *Streights*, and perhaps is in some fear that he may be taken by the *Moors* or *Turkish* Pirates, and so made a Slave, for the Redemption of whom a Ransom must be paid, he may advance a *Premio* accordingly upon a Policy of *Assurance*; and if there be a Caption, the Assurer must answer the Ransom that is secured to be paid on the Policy.

V. Those *Assurances* are most dangerous when there are these words inserted, *lost or not lost*; which is commonly done when a Ship hath been long missing, and no Tidings can be had, the *Premio* (especially in time of War) will run very high, sometimes 30. or 40 *per Cent.* and though it happens at the time that the Subscription is made, the Ship is cast away, yet the Assurers must answer.

But if the Party that caused the *Assurance* to be made, saw the Ship wreckt, or had certain Intelligence, such Subscription will not oblige, the same being accounted a meer Fraud.

So likewise if the Assured, having a rotten Vessel, shall assure upon the same more than she is worth, and afterwards give order that, going out of the Port, she should be sunk or wreckt,

wreckt, this will be fraudulent, and not oblige the Assurers to answer.

A Merchant having a doubtful Account of his Ship, insures her, without acquainting the Insurers of her Danger; Chancery relieved against the Policy of this fraudulent Insurance.

In the Year 1678, one *Nownham Perkins* and *Stoakes* were Owners of a Vessel called the *May-Flower Ketch*, the Vessel coming laden with Wines on the account of *Fierbrasse* and *Stone*, to the *Isle of Wight*; *Perkins* being then in the same Place, contrives with one *Ivy* the Master to sell the Freighters Goods privately, and that being effected; to go out to Sea some small distance from the Isle, and there privately sink the Vessel, and pretend she struck, and then foundered by the Extremity of Weather. The Plot being laid, *Perkins* hastens up to *London*, and makes a Policy of Assurance on the Vessel; which being done, remits his Orders to *Ivy* to put in Execution the Contrivance, who accordingly, the Goods, or the best of them, being disposed of, stands out to Sea, and then with his own Hands, by the Force of an Iron Crow, makes a hole in the Hold, and then in his long Boat (the Crew perceiving the Vessel to be sinking) conveys himself and Mariners ashore; *Ivy* remits up advice of the Loss, and *Perkins* (as if he had never known any thing of the Matter) demands the Monies assured with great Confidence, and thereupon brings an Action for the same; but before the Cause came to a Trial, *Fierbrasse* and *Stone* bring Trover against *Perkins*; and thereupon the whole Practice came out, and a Verdict was had against the Defendant, with this further, That

Hill. 32 Car.
2. B. R.

That if *Perkins* would proceed on his Actions on the *Assurance*, he must expect that this Practice and Fraud of his would totally poison his *Assurance*, and thereupon, being well advised, never proceeded.

The Insurance was against the Barretry of *L. Raymond*, the Master; the Breach assigned was, that the Ship was lost by the Fraud and Neglect of the Master; this is well enough; it is the Meaning of the Words of the Policy; it is not necessary to use the very Words. ^{1349. 8 Mod. 231. Stra. 581.}

The Government laid an Embargo, seized a Ship, and converted her to a Fire-ship; the Insurers are liable. *Ibid.* 840.

Where a Master deviates for the Benefit of his Owners it is no Barretry, though it may be a Breach of Contract. 2 *Stra.* 1173.

If the Mariners force the Master to return, it is not Barretry. 2 *Stra.* 1264.

If a Ship warranted to depart with Convoy, goes out of the Way in order to have the Opportunity of Convoy, this is no Deviation. *Bur. Rep.* 347, &c.

A Deviation (without Necessity) determines the Policy, and discharges the Insurer. *Bur. Rep.* 351.

VI. Besides the two Corporations before-mentioned, there are several Offices near the *Royal-Exchange* for the assuring Ships and Merchandize, where many of the most eminent Merchants by their Subscriptions subject themselves to the Payment each of a Sum certain, as 100*l.* or more, at the *Premio* then current, which in the Policy is said to be received, tho' it may be not actually paid: There used to be a Clause to deduct 10 *per Cent.* in Case of Loss, and six *per Cent.* more was customarily abated on Account of

prompt Payment. So that the Assured received but 84 l. *per Cent.* But of late it is become much more frequent to stipulate for an Abatement of two *per Cent.* only, in which Case there is a proportional Advance of the *Premio*.

If an Assurer pays his Money, believing the Ship to be lost when it is not, he may bring an *Assumpsit* for the Money. Cited to be adjudged, *Salk. 22. pl. 2.*

VII. The *Policies* now-a-days are so large, that almost all those curious Questions that former Ages, and the Civilians according to the Law Marine, nay, and the common Lawyers too, have controverted, are now out of Debate;

Ut quæ in navibus imposuissent, ab hostium tempestate, et vi publico periculo essent: Negotiatoribus certe lucra proposuit suscepto in se damno, si scarce any Misfortune that can happen, or Provision to be made, but the same is taken care for in the *Policies* that are now used; for they insure against Heaven and Earth, stress of Weather, Storms, Enemies, Pirates, Rovers, &c. or whatsoever Detriment shall happen * or come to the Thing insured, &c. is provided for.

cui quid per tempestates accidisset, Livius, lib. 23. cap. 25. Vide Zetus in Commentario ad digesta tit pro Socio, num. 25.

* *Sub nomine periculi, de quo fit cautio, comprehenditur omnis casus qui accidit in mari, à tempestate, ab hostibus, prædonibus, reprisaliis, ut vocant arrestis aliisque modis usitatis & inusitatis citra fraudem & culpam contrahentium, aut domini mercium vel navis. Grotius de Jure Holl. part 24.*

2 Vern. 176.

4 Com. Dig.

396.

But a Policy against Restraint of Princes, will not extend to Practices against the Laws of Countries, to a Seizure for not paying Custom and the like.

A Man lent Money on a Bottomry-Bond, and insured the same Money on the Ship; she out-lived the Time in which the Bond came due, and then was lost; he recovers on the

the Bond; Chancery would not suffer to recover on the Policy also, but decreed it to be delivered up. *Eg. Abr.* 371. and 2 *Perm.* 269.

But where the Insurance was larger as to the Voyage, than the Bottomry-Bond, and the Ship was lost, Chancery would not intermeddle. 2 *Perm.* 717.

When an Assurance is Interest or no Interest, the Plaintiff has no occasion to prove his Interest; for the Defendant cannot controvert it. *Com. Rep.* 360. *pl.*

On a Policy Interest or no Interest, a Recapture, after being in an Enemy's Port, will not avail the Insurer. 2 *Stra.* 1250.

VIII. If a Merchant ensures such a Ship generally, and in the Policy it is expressed of such a Burthen, the Ship happens then to be laden, and after miscarries, the Ensurer shall not answer for the Goods, but only for the Ship. *Locinius, lib.* 2. *cap.* 5. 6. 7. 9. 10.

It matters not in the Policy whether the particular Wares and Goods are named, but generally upon the principal Wares, and all other Commodities laden or to be laden for the Ensured; or for his Account, or for any other.

IX. If a Ship be Ensured from the Port of London to Cadix, and before the Ship breaks Ground, takes Fire, and is burnt, the Assurers in such a case shall not answer, for the Adventure begun not till the Ship was gone from the Port of London; but if the Words had been, at and from the Port of London, there they would upon such a Misfortune have been made liable.

If such an Assurance had been from London to Cadix, and the Ship had broke Ground, and afterwards been driven by Storm to the

Note, The Port of London extends from the

North Fore-
land in the
Isle of Thanet,
over in a Line
to the Nose in
Essex; and
from thence
to London-
Bridge, Rot.
Scaccar. 19.
Car. 2.

Port of *London*; and there had took Fire; the Ensurers must have answered; for the very breaking of Ground from the Port of *London* was an Inception of the Voyage.

On the other hand, if a Man at *Cadix* ensures a Ship from thence to *London*, if a Loss happens, the Assurer, if he comes into *England*, shall answer by the *Common Law*; for though the Place where the Subscription was made, and the *Premio* given was in a Foreign Country, yet that is not material, for the Action that is brought is grounded on the Promise which is transitory, and not local, and so it was adjudged, where the Defendant in consideration of 10 *l.* had ensured, that if the Plaintiff's Ship and Goods did not come safe to *London*, he would pay 100 *l.* afterwards the Ship was robbed on the Sea, and in an Action brought for the 100 *l.* the Plaintiff had Judgment, notwithstanding the Robbery or Loss was on the main Sea, and the Subscription out of the Realm.

Deviation or not must be construed according to Usage. 2 *Salk.* 445.

An Intention to deviate does not discharge the Under-writer. 2 *Stra.* 1249.

If the Mariners force the Master to return, it is no Deviation. 2 *Stra.* 1264.

Where the Master deviates for the Benefit of his Owners, it may be a Breach of Contract. 2 *Stra.* 1173.

Salk. 444.
2 *L. Raym.*
840.

Stracha 806,
cited in *Shorw.*
325.

X. If after a Policy of *Assurance*, a Damage happens, and afterwards in the same Voyage a Deviation, yet the Insured shall recover for what happened before the Deviation, for the Policy is discharged from the time of the Deviation only.

XI. If Goods are insured in such a Ship, and afterwards in the Voyage it happens she becomes leaky and crazy, and the Super-Cargo and Master by consent become Freighters of another Vessel for the safe Delivery of the Goods; and then after her relading, the second Vessel miscarries; the Assurers are discharged. But if there be these Words, *The Goods laden to be transported and delivered at such a Place by the said Ship, or by any other Ship or Vessel until they be safely landed,* then the Assurers must answer the Misfortune.

* That has been much doubted, and Opinions of the Court have generally inclined against the Assurers. *Leg. ult. ad Rhod. Digest. Paulus. lib. 14. tit. 2. §. 10.*

The Insured have no Right to charge the Bottom, though to a better or stronger Ship. *Bur. Rep. 34.*

XII. If a Man insures 5000 l. worth of Goods, and he hath but 2000 l. remitted, now he having insured a real Adventure, by the Law Marine all the Assurers must answer *pro rata*, if a Loss. But by the Opinion of some, only those first Subscribers who underwrit so much as the real Adventure amounted to, are to be made liable, and the rest remitting their *Premio* (10 s. per Cent. deducted out of the same for their Subscriptions) are to be discharged.

Vide Grot. Introd. Jur. Hol. 212. 23. And indeed is more the Custom of Merchants than Law.

On a Policy of Insurance on Goods by Agreement valued at 600 l. and the Insured not to be obliged to prove any Interest, the Lord Chancellor ordered the Defendant to discover what Goods he put on board; for although the Defendant offered to renounce all Interest to the Insurers; yet referred it to a Master to examine the Value of the Goods saved, and to deduct it out of the Value or Sum of 600 l. at which the Goods were valued by the Agreement.

2 Fern. 716.

Debt upon Obligation with Condition, to pay so much Money, if a Ship returned within six Months from *Offend in Flanders to London* (which was more by a third Part than the Legal Interest of the Money) and if she do not return, then the Obligation to be void: The Defendant pleaded, that there was a corrupt Agreement between him and the Plaintiff, and that at the time of making of the Obligation, that he should have no more for Interest than the Law permits, in case the Ship should ever return, and avers that the Bond was entered into by Covin, to avoid the Statute of Usury. *Per Hak*, clearly this Bond is not within the Statute, for this is the common Way of Assurance, and if this were void by the Statute of Usury, Trade would be destroyed, for it is a casualty whether ever such Ship shall return or not, but he agreed the Averment was well taken, because it disclosed the manner of the Agreement. *Farrers 418. Joy against Kent.*

To depart with Convoy. Action upon the Case, upon a Policy of Assurance of Goods from *London to Naples*; the Adventure was to begin in time of the Lading at *London* (Dangers of the Sea only excepted) with this Clause, *warranted to depart with Convoy*; the Ship departed with Convoy, but was separated from the Convoy by stress of Weather, and put into *Torbay*, and was there detained by contrary Winds; afterwards the Master of the Ship expecting to meet the Convoy, departed out of the Harbour, but could not meet the Convoy, being hindered by stress of Weather; the Ship was taken by the *French*. Judgment pro *Quer*. *Jeffries v. Legendre. B. R.*

Case

Case upon a Policy, which was to insure *Salk. 445.*
the *William Galley*, in a Voyage from *Bremen*
to the Port of *London*, warranted to depart
with Convoy: The case was, the Galley set
sail from *Bremen* under Convoy of a *Dutch*
Man of War to the *Elb*, where they were
joined with two other *Dutch* Men of War,
and several *Dutch* and *English* Merchant
Ships, whence they sailed to the *Texel*, where
they found a Squadron of *English* Men of
War and an Admiral; after a stay of nine
Weeks, they set out from the *Texel*, and the
Galley was separated in a Storm, and taken
by a *French* Privateer; taken again by a
Dutch Privateer, and paid 80 *l.* Salvage.
And it was ruled by *Holt C. J.* That the
Voyage ought to be according to Usage, and
that their going to the *Elb*, though in Fact
out of the Way, was no Deviation; for till
after the Year 1703, there was no Convoy
for Ships directly from *Bremen* to *London*:
And the Plaintiff had a Verdict. *Bond v. Gan-*
sell, February 14, 1704, coram Holt C. J. at
Nisi Prius at Guildhall.

Warranted to depart with Convoy has been
resolved to import, by the Usage of Mer-
chants, a Continuance with that Convoy as
long as may be. *10 Mod. 287.*

In Policies warranted to depart with Con-
voy, shall be intended, without the wilful
Default of the Master. *2 Salk. 443. pl. Show.*
Rep. 320. pl. Carth. 216, 217. 4 Mod. 58.
Cas. Temp. Holt 465.

If a Ship warranted to depart with Con-
voy, goes out of the way, in order to have
the Opportunity of Convoy, this is no De-
viation. *Bar. Rep. 347.*

A Ship which fails with the Convoy, tho' hindered by the Weather from taking sailing Orders, departs with Convoy. 2 *Stra.* 1250, 1251.

A Ship warranted to depart with Convoy is insured during her Voyage, and in her Way to the general Rendezvous. 2 *Stra.* 1285.

Locin. l. 2.

c. 5. §. 9.

And by the Laws of *Antwerp* there is a time allotted after the Ship's arrival at her Port, how long the Adventure is to be borne by the Ensurers, which is about 15 days.

Art. 13. Asses- cur Antwerp.
Cafe of Mon-
sieur Gourdan
Governor of
Cales, Anno
1585.

XIII. A Merchant ensures his Goods from *London* to *Sallee*, and there to be landed; the Factor, after Arrival, having Opportunity, sells the Cargo aboard the same Ship without ever unlading her, and the Buyer agrees for the Freight of those Goods for the Port of *Venice*; before she breaks Ground the Ship takes Fire, the Assured and Buyer are absolutely without Remedy; for the Property of the Goods becoming changed, and Freight being contracted *de novo*, the same was as much as if the Goods had been landed.

And so it is, if the Factor after her Arrival had contracted for Freight to another Port, and the Ship had happened to take Fire, the Assurers are hereby absolutely discharged for ever.

XIV. If a Ship be ensured from *London* to and blank being left by the Lader to prevent her Surprize by the Enemy, in her Voyage she happens to be cast away, though there be private Instructions for her Port, yet the Ensured sit down by the Loss by reason of the Uncertainty. So a Blank is left in the Policy for the Value of the Ship or Lading, if a Loss, and there be not Words that may supply, the Ensured may endanger the Policy.

Stiles 132.

2 Rolls Abr.
248.

A taking of a Ship (that is insured) by Pirates is to be understood, the Perils of the Sea.

Where

Where Goods are redeemed from a Pirate, Contribution must be paid by all, because the Redemption is made for the Safety of all; but if the Pirate be once Master of all, and yet take but some special Goods, whether from Ship or Merchant, and not as a Contention for sparing of the rest, in this Case, because the Remainder is not assured thereby, but freely spared, no Contribution is to be made for the taken Goods to charge any Assurer with any part thereof. So Contribution shall be made for Goods spoiled by wet, or other accident. Again, if it be needful to lighten a Ship for her easier entry into Harbour or Channel, two parts of the Loss fall upon the Goods, and the third upon the Ship; unless the Ship is more worth than the Lading, and the Charge of the Goods be not the Cause of her inability to enter, but some bad Quality proceeding from the Ship itself, or that otherwise it be provided in the Charter-party. *Lex Mercat.* 109.

XV. After Notice of Loss, the Ensured, *Locinius, l. 2.* (if he doth think fit) for that he hath ensured *c. 5. §. 8.* the most of his Adventure, or that he would have the Assistance of the Assurers; when there is hope of Recovery of the Adventure, he may then make a Renunciation of the Lading to the Assurers, then he comes in himself in the nature of an Ensurer, for so much as shall appear he hath borne of the Adventure beyond the Value ensured.

But if the Merchant shall not renounce, yet there is a Power given in the Policy for him to travel, pursue, and endeavour a Recovery (if possible) of the Adventure after a Misfortune to which the Assurers are to contribute,

tribute, the same being but a trouble to give ease to the Assurers.

If prohibited Goods are laden aboard, and the Merchant ensures upon the general Policy, which always contains these Words: *Of the Seas, Men of War, Fire, Enemics, Pirates, Rovers, Thieves, Jettisons, Letters of Marque and Countermart, Arrests, Restraintments, and Detainments of Kings and Princes, and all other Persons, Barretry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes whatsoever they be, and howsoever they shall happen to come, to the hurt and detriment of the Goods and Merchandize, or any Part or Parcel thereof;* whether if such Goods be lawfully seized as prohibited Goods, the Ensurers ought to answer? It is conceived they ought not; and the difference hath been taken, where Goods are lawful at the time of lading to be imported into that Country, for which they are consigned for; but by Matter *ex post facto* after the lading they become unlawful, and after Arrival are seized, there the Assurers must answer by virtue of the Clause, *And all other Perils, &c.* But if the Goods were at the time of lading unlawful, and the Lader knew of the same, such Assurance will not oblige the Assurers to answer the Loss; for the same is not such an Assurance as the Law supports, but is a fraudulent one.

In hoc contractu bona fide versandum est, ut natura ultro citroque obligationis postulat. Locinius, lib. 2. cap. 5. §. 8.

A Policy was made from Cadix to Vera Cruz in New Spain, upon Monies lent upon Bottomry, and upon any kind of Goods and Merchandize whatsoever loaden aboard the Good Ship called the *Nuestra Señora del Carmen* and *Mary Magdalen*, the Adventure beginning immediately from the lading before

from a Day to come, and the Monies from the Time they were to be lent, and so to continue from *Cadiz* to *Vera Cruz*, and after Delivery, with Provifo to stay at any Port or Place in her Voyage, and likewise to touch at *Porto Rico*, and there to lade and unlade without any Prejudice to the Ensurance, the Cargo being valued at 1000 l. Sterl. without Accout, &c. against Seas, Men of War, Estrail, Enemies, Pirates, Rovers, Thieves, Yezuzins, Letters of Mart and Countermart, Surprizes at Sea, Arrests, Restraints and Detainments of All Kings, Princes, and People, of what Nation, Condition, or Quality forever. The Ship being laden at *Cadiz*, did depart towards *Vera Cruz*, and before Arrival there, touching at *Porto Rico*, the Goods were there seized and arrested. In an Action brought upon the Policy, the Defendant came in and pleaded, That the Ship at her arrival in her Voyage at the Port of *Rico*, was laden with Goods and Merchandize prohibited, and the same, and also the Ship, did there become forfeited by Default of the Proprietors, and was there seized and taken. The Question was, if the Owners should enforce, and then order prohibited Goods to be laden, whether that an Arrest upon the same should entitle them to a Recovery? The second Objection was, If (as the Defendant had pleaded this Plea) the same were good? As to the first, the Court did all incline, that the Ensurance ought to be *bona fide*, i. e. the Restraint ought to be of such Goods as by Law were not restrainable; but surely that cannot be, for the Intention of Policies are to warrant the Perils of all manner of Goods in all manner of Cases. So that if there be a loading

Houlston v. Harrison.
Hill. 31, 32.
Car. 2. B. R.
Judg. in Pasch. seq.

Like Judgment was given against
Letbultair adf.
Houbland,
Trin. 32 Car.
2. in B. R.
Rot. 168.

* 12 Car. 2.
cap. 32.
14 Car. 2.
cap. 7.
 * 12 Car. 2.
cap. 18.

loading: *bona fide*, he is prohibited or not, the same in Case of Loss ought to be answered; unless it were a fraudulent Contrivance: But to the second it was resolved, That the Plea was insufficient; for admitting the fault should not oblige the Ensurers; yet because the Defendant did not shew that the Goods were laden either by the Ensured, or by their Factor or Order, otherwise the same should not conclude them; for perhaps the Master or his Mariners, or a Stranger, might load them on board without Order, so that upon the meer Insufficiency of the Manner of Pleading, and not of the Matter, the Court gave Judgment for the Plaintiff; and also, or But if a Merchant will freight out Wool, Leather, and the like, or send out Goods in a Foreign Bottom, and then make a Policy, the Ship happens afterwards to be taken, by reason of which there becomes a Forfeiture of Ship and Lading, the Ensurers are not made subject to answer the Damage; for the very Foundation was illegal and fraudulent, and the Law supports only those Assurances that are made *bona fide*; for if otherwise, and Men could be insured against such Actions, they would destroy Trade, which is directly so thwart the Institution and true Intentions of all Policies. By an Act 12 Geo. 2. c. 21. Sect. 29. All and every Person or Persons whatsoever, who, by way of Insurance, shall undertake or agree, that any Wool, Wool-Fells, Wool-Flocks, Mottlings, Shortlings, Cruels, Worsted, Woollen, and Bay Yarn, Mattresses and Beds stuffed with combed Wool, or Wool fit for combing, shall be carried or conveyed to any Parts beyond the Seas, from any Part of

Great

Great Britain or Ireland, forfeits 500*l.* to the Use of the Informer, over and above all other Forfeitures and Penalties.

But if Goods should happen to be lawfully insured, and afterwards the Vessel becomes disabled, by reason of which they are laden by Consent of the Super-Cargo or Merchant into another Vessel, and that Vessel, after Arrival, proves the Ship of an Enemy, by reason of which the Ship becomes subject to Seizure; yet in this Case Insurers shall answer, for that this is such an Accident as is within the Intention of the Policy.

Ritterbusch. ad leg. contrab. 23. de Reg. jur. cap. 18. p. 236, 237. Steynerman de Ho loco num. 335.

Several Men laden aboard Salt, without Distinction, not putting them in Sacks, and the like; the Ship arrives, the Master delivers to their Principals according to their Bills of Lading as they come one by one, it falls out that some of the Salt is washed or lost by reason of the Dampness of the Ship, and that the two last Men cannot receive their Proportion. There are in this Case these Things to be considered:

1. Whether the Master is bound to deliver the exact Quantity?
2. Whether those that have received this Loss can charge the Assurers?
3. Whether the Assurers can bring in the first Men for a Contribution, they having their Salt delivered to them completely?

Certainly the Master is not bound to deliver the exact Quantity, nor is he obliged to re-deliver the very specifical Salt, but only as Men are to repay Money or Corn by the Distinction in a Bag or Sack, and out of them; but if the Fault was in not pumping, keeping dry his Deck, and the like, there

Lastlow v. Tomlinson, Hob. 88. Jenk. 287. Leg. quod cum venit de re b. ob.

et contra:

et contra: Though perhaps there may be special Agreement.

Besides, this is a Peril of the Sea which the Master could not prevent, and of necessity he must deliver to one first before another.

As to the second, It is no Question but that the Assurers shall answer. But whether they shall bring in the first Men for Contribution, may be some Doubt.

*D. Leg. in
mandat.*

It has been conceived by some, that they ought not, for they delivered their Salt to the Master *sicquam in Creditum*, and were not to expect the Re-delivery of the same specific Salt.

But by others it has been conceived they ought to contribute *pro ratione*; for as Goods of necessity, some must be stowed in the Hold, and that such Goods seldom escape the Peril of the Sea; so the rest must of necessity contribute to that Misfortune, and so make no Distinction.

The Bills of Lading are very useful to settle the Difference between the Assurer and the Assured, of which there are three Parts, one sent over Sea, the other left with the Master, and the last remaining with the Lader.

*2 Black. Com.
467.*

The Learning relating to Marine Insurances hath of late Years been greatly improved by a Series of judicial Decisions, which have now established the Law in such a Variety of Cases, that (if well and judiciously collected) they would form a very complete Title in a Code of commercial Jurisprudence. But, being founded on equitable Principles, which chiefly result from the special Circumstances of the Case, it is not easy to reduce them to any general Heads in mere elementary Institutes. Thus much
may

may however be said; that being Contracts, the very Essence of which consists in observing the purest good Faith and Integrity, they are vacated by any the least Shadow of Fraud or undue Concealment: And, on the other hand, being much for the Benefit and Extension of Trade, by distributing the Loss or Gain among a Number of Adventurers, they are greatly encouraged and protected both by Common Law and Acts of Parliament. But, as a Practice had obtained of insuring large Sums without having any Property on board, which were called Insurances, *Interest or no Interest*; and also of insuring the same Goods several Times over; both of which were a Species of Gaming, without any Advantage to Commerce, and were denominated *wagering Policies*: It is therefore enacted by the Statute 19 Geo. II. c. 37. that all Insurances, Interest or no Interest, or without farther Proof of Interest than the Policy itself, or by way of gaming or wagering, or without Benefit of Salvage to the Insurer, (all which had the same pernicious Tendency) shall be totally null and void, except upon Privateers, or Ships in the *Spanish* and *Portuguese* Trade, for Reasons sufficiently obvious; and that no Re-assurance shall be lawful, except the former Insurer shall be insolvent, a Bankrupt, or dead; and lastly that, in the *East-India* Trade, the Lender of Money on Bottomry, or at *respondentia*, shall alone have a Right to be insured for the Money lent, and the Borrower shall (in case of a Loss) recover no more upon any Insurance than the Surplus of his Property, above the Value of his Bottomry or *respondentia* Bond.

See Bur. Rep.
492, 493.

C H A P. VIII.

Of Prisage and Butlerage.

- I. *What Prisage is, and where taken, and of what.*
- II. *Merchant Strangers exempted from the same.*
- III. *When due, and the exemption of the Citizens of London from the same.*
- IV. *What Citizens are capable, and where not.*
- V. *A Foreigner imports and makes a Citizen Executor and dies; whether he shall have the Benefit of the Immunity.*
- VI. *Where a Foreigner sells to a Citizen before Bulk be broken; the Vendee shall be chargeable.*
- VII. *Where a Grant to discharge a particular Ship shall be good; and where a Grant to particular Persons shall be otherwise.*
- VIII. *Of Butlerage, what, and who are exempted.*
- IX. *Where the King becomes entituled to those Duties.*
- X. *A Grant to be free of all Customs, Impositions, &c. extends not to Prisage and Butlerage.*
- XI. *Cinque Ports exempted from Prisage.*

I. **P**RISAGE is a certain taking or purveyance for Wine to the King's use; the same is an antient Duty which the Kings of England have, time out of mind, had and received; the manner hath been by taking of every Ship or Vessel that should come into this Realm, if ten Tuns, to have for Prisage one Tun: And if it contain twenty Tuns or more, to have two Tuns, (*viz.* one Tun before the Mast, and the other behind the Mast) paying 20 s. for each Tun. This antient Immunity they have enjoyed as a Flower of the Crown, and by some has been conceived not grantable away without Act of Parliament. But yet in 6 E. 3. fol. 3. Case 15. mentions the same to be grantable over.

Dyer 92, 42,
165.

Fleta, l. 2. c.

2.

Salk. 617.

Such

Such Wine may be tasted, and the fullest Vessels may be taken for Prisage. And if a Ship has ten Tuns, then only one Tun is to be taken; and none if there be but nine Tuns, unless there be Evidence of Fraud. But if there be nine Tuns and an half, that is Fraud apparent; and then one Tun shall be taken.

II. King Edward the First having laid some Impositions on the Merchants, which, in Anno 25. of his Reign, being taken away, with Promise, that neither he nor his Successors should do any such thing without Assent of Parliament; in the one and thirtieth of his Reign they granted him an Increase of Customs, in lieu of which he granted them many Immunities, as Release of *Prisage*, &c.

III. *Prisage* is not due till the unlading, or that which is commonly called breaking of Bulk; for the Words are *De qualibet navis important vna, & disonerant inde*. King Edward the Third by his Charter dated 6 Martii Anno Regni Primo, granted his Royal Charter of Discharge to the Mayor, Commonalty, and Citizens of London, in hæc verba, (viz.) *Quod de vinis Civium nulla prisage fiant, sed perpetuè inde essent quieti, &c.* which was afterwards allowed in the *Exchequer*.

IV. It is not every Citizen that is capable of this Privilege, but only those that are resident within the City: And so it was ruled in the Case of one Knowles, who being a Citizen and free Grocer of London, removed his Household cum pannis, and did dwell at Bristol, but yet kept his Shop in London; and a Ship of his arriving with Wines at London, and being unladen, the Prisage was demanded; he claimed the Benefit of Discharge. It was adjudged, he was not capable of the same:

Hard. 477.

Rot. Parl. 31.

E. 1. cap. 11.

& 2.

Relv. 198.

Kenicot v.

Bogan

2 Bulst. 250.

4 H. 6, Rot.

14. Knowles's

Case 3 Bulst.

4. Calth 35.

For he that will claim the Benefit of his Discharge ought to be *Civis Et Incola commorans*.

By 24 H. 6. (a private Act of Parliament)
 3 Bulstr. 4, 5. Complaint was made, That the Lord Mayor of London would make Strangers Citizens; It was there declared, that this Benefit to be discharged from Payment of *Prisage*, did not extend to such Citizens as were *donati*, made free, but unto those Citizens only which *commorant incolant*, and are resident in the City.

3 Bulstr. 3. V. If a Foreigner brings a Ship laden with Wines, into the Port of London, and then makes a Citizen his Executor and dies, he shall not have the Benefit of this Immunity from Payment of *Prisage* for these Wines, for that they are not *bona Civium*.

3 Bulstr. 10. VI. If a Foreigner arrives with a Ship laden with Wines at a Port with an Intention to unlade, and before the Goods are entered, or Bulk is broken, he sells them to a Citizen, *Prisage* shall be paid notwithstanding, for it was never the Intent of the King in this his Grant to discharge a Citizen in such a manner.

3 Bulstr. 10, 11. VII. If the King does discharge such a Ship of 7. S. being at Sea, particularly naming the same, from the Payment of *Prisage*, and he dies before the Ship arrives, no Duty can be demanded.

Hanger's Case,
 Catbr. Rep.

3. But it has been held, if a particular Person has a Grant to him to be discharged of his Goods, and he dies before the Arrival, the Duty shall be paid.

3 Bulstr. 1.
 1 Ro. 138.

Vide the

Cafe at large, for the Court was divided in Opinion.

Quo Warranto's were brought against three Archbishops of York, to shew Cause why they demanded to have *Prisage* for Wines brought into the Port of Hull: The two first pleaded to have only the first Taste, and a pre-emption after

after *Prisage* paid; but the third pleaded a Charter of 15 E. 2. by force of which he claimed the same; and ruled not good. But though the Charter might be good, yet it was held in that case, a disclaimer by the Predecessor should bind the Successor. Note, the Duke of Ormond in Ireland had an Inheritance in the *Prisage* of Wines by the King's Charter. But the same was forfeited. 2 G. 1.

Archbishop
of York's Case.

Sir John Davies in the
Case of Customs.

VIII. *Butlerage* is a Custom due from Merchant-Strangers, of 2 s. upon every Tun of Wine brought into this Realm by them; but *Englismen*, pay it not.

King John granted to the Merchants of *Aquitain*, trading for Wines thence into *England*, divers *Liberties*, and amongst others, *Libertatibus concessis Mercatoribus vinetariis de Ducatu Aquitanie reddendo Regi & heredibus suis 2 s. de quolibet dolio vini ducti per eisdem infra Regnum Angliæ vel potestatem Regis.*

In libro Rubro
in Scaccario
Remem fol.
265.

All Merchants-Strangers in consideration of the Grant to them by the King of divers *Liberties* and *Freedoms*, *Concesserunt de quolibet dolio vini quod adducent vel adduci facerent infra Regnum, &c. solvent nobis & heredibus nostris nomine Custumæ duos solidos, &c.*

Rot. Chartarum, Anno 31.
E. 1. num. 44.
called *charta Mercatoria.*

See the Charter at large in the Chapter of Customs.

1 H. 8. c. 5.
2 Ed. 6. 22.

It is called *Butlerage*, because the King's chief Butler doth receive it. If any Person free of *Prisage* or *Butlerage*, customs Wines of a Person not free of *Prisage* or *Butlerage*, he forfeits double the Value of the *Prisage* of the Wines so customs.

By Stat. 1. H. 8. ch. 5. Making false Entry to defraud the King of *Prisage* and *Bulerage*, infers a Forfeiture of double the Value. And by Stat. 2. and 3 E. 6. ch. 22. of the Offender's Goods and Chattels, provided the

Prosecution be within three Years. One Moiety to the King, the other to the Informer.

*Kenicot v. Bogan, Yel-
verton* 198.
2 Bulstr. 250.
Boyton's Case;
3 Rep. 44.

IX. Breaking of Bulk is that which entitles the King to the Duty: For if a Merchant imports Wines to the Number of 20 Tuns, yet if he unlades but part, as nine or four Tuns, yet the King shall have the entire *Prisage*; and though the Custom seems to declare, that the taking *must be as well before as after the Mast*, yet is not the Officer tied to that Strictness, but may take where he pleases; for two Tuns are the King's due; for otherwise he might be cozened, the Freighter perhaps lading other Commodities aboard after the Mast.

If there be but one Tun taken out, yet the Duty must be paid: The reason is, for that otherwise the Officers should be obliged to travel perhaps all over the Kingdom.

Vouched in
the Case of
Customs in
Sir John Da-
vies's Re-
ports.

X. The King granted to a *Venetian Merchant* that he should be quit, *de omnibus Custumis, Subsidiis, & Impositionibus, & omnibus aliis denariorum summis debitis & solubilibus pro quibuscunque Merchandizis importandis*; and that he should be as free as the Citizens of *London*. In that case it was adjudged in the *Exchequer*, That by that Grant the King did not discharge him of *Prisage*, because the *Prisage* was not specially expressed in the Grant, although that the City of *London* were by a special Charter freed of *Prisage*.

Cl. 1 E. 1.
m. 5.

Bulstr. 3 part
fol. 1.

XI. The Cinque Ports are likewise discharged of *Prisage*; yet if a Citizen of *Salisbury* should consign Wines to be delivered and unladed at *Dover*, the bare Discharge of the Goods at that Port will not acquit the Importer from the Duty; for it is not the Party's Importation, but his Domicil that qualifies him for the Benefit of his Immunity.

C H A P. IX.

Of Pilots, Warfage, Primage, Average,
Lodmanage.

- I. *Of the Pilot's Charge till the Ship is brought to her Place or Bed.*
- II. *If the Ship is likely to miscarry, what the Ships Crew may do at such Time.*
- III. *Of ignorant Pilots, their Punishment, and if the Ship miscarries, who shall answer.*
- IV. *Of Wharfage, and where the Wharfingers shall answer, and where not.*
- V. *Primage and Petty Lodmanage where due, and for what; and if the Ropes break, whether the Master or Wharfinger shall answer.*
- VI. *Petty Average where due, and for what, and Hat-money.*
- VII. *Lodmanage where due, and for what.*

I. **B**Y the Laws of *Oleron*, after that the Pilot hath brought the Ship to sure Harbour, he is no further bound or liable; for then the Master is to see her bed and to her lying, and bear all the rest of her Burthen, Charge, and Danger, except that of the Act of God: So that before she comes to her place or bed, and while she is under the Pilot's charge, if she or her Goods perish, or be spoiled, the Pilot must make good the same.

II. By the Laws of *Oleron*, if his Fault is *Leg. Oleron*, notoriously gross, that the Ships Crew sees *cap. 25.* an apparent Wreck, they may then lead him to the Hatches, and strike off his Head; but the Laws of *England* allow no such hasty Execution.

By the Laws of *Denmark*, an ignorant Pilot is to pass thrice under the Ship's Keel.

The Master generally in the Charter-party covenants to find a Pilot, and the Merchant covenants to pay him his Pilotage.

III. But if a Ship should miscarry coming up the River, under the charge of the Pilot, it has been a Question, whether the Master should answer in case of the insufficiency of the Pilot; or whether the Merchant may have his Remedy against both? It hath been conceived, the Merchant hath his election to charge either; and if the Master, then he must lick himself whole of the Pilot.

After Aug. 1, 1717, no Person shall pilot any Ship from Dover, &c. unless he have been examined, &c. by the Master, &c. of Trinity-house, and be admitted into that Society.

First Offence 10 l. second 20 l. and every other 40 l.

How the Penalty shall be recovered and disposed of.

By Stat. 3 Geo. 2. c. 13. Sect. 1. If any Person shall take upon him to conduct or pilot any Ship, by or from *Dover, Deal*, or the Isle of *Thanet*, to any Place on the River *Thames* or *Medway*, before he has been first examined by the Master and Wardens of the Society or Fellowship of Pilots of the *Trinity-house* of *Dover, Deal*, and the Isle of *Thanet*, touching his Ability, and approved and admitted into the said Society at a Court of Loadmanage, by the Lord Warden of the Cinque Ports, or his Deputy, and the Master and Wardens; such Person for the first Offence shall forfeit 10 l. for the second 20 l. and for every other Offence 40 l. to be recovered with Costs by any Person in the Court of Admiralty for the Cinque Ports, in case such Offender live and be found within the Jurisdiction of the said Court, nor else by Action in any of the Courts at *Westminster*; one Moiety of the Forfeiture to go to the Informer, the other to the Master and Wardens of the said Society, to be distributed amongst such superannuated Pilots, and the Widows of Pilots, of the said Society, as the Master and Wardens shall appoint.

By

By *Sec. 2.* This Act shall not prevent the Master, &c. Master or Mate of any Ship, or part Owner, residing at *Dover, Deal, or the Isle of Thanet,* from piloting his own Ship; nor subject any Persons to the Penalties, who shall be hired by any Master to pilot his Vessel; provided none of the Society, within one hour after such Ship shall arrive at any of the said Places, be ready to pilot the same.

By *Sec. 3.* Masters of Merchant Ships may make choice of such Pilot of the Society as they shall think fit; and no Person shall continue in the Society, who shall not pilot a Ship at least twice in one Year, (unless prevented by Sickness) to and from the Places abovementioned.

By *Sec. 4.* For conducting any Ship from *Dover, Deal, or the Isle of Thanet,* to any Places on the River *Thames* and *Medway,* and following and no greater Prizes shall be taken; viz. for every Ship drawing seven foot Water, 3 l. 10 s. eight foot 4 l. nine foot 4 l. 10 s. ten foot 5 l. eleven foot 5 l. 10 s. twelve foot 6 l. thirteen foot 6 l. 10 s. fourteen foot 7 l. fifteen foot 7 l. 10 s. sixteen foot 8 l. seventeen foot 8 l. 10 s. and no Allowance to be made for odd Inches.

By *Sec. 5.* If any Pilot shall negligently lose the Ship under his Charge, and be thereof convicted, he shall for ever after be incapacitated for acting as a Pilot; and the Number of such Pilots shall not be less than six, whose Names, Ages, and Places of Abode, shall every 25th of March be affixed in some public Place, in the Custom-houses at *London* and *Dover*; and forthwith returning forth List, the Master and Wardens of the Society shall forfeit 10 l. to be recovered in the Cinque Ports.

Ports by any Person who shall sue for the same.

Not to hinder any from assisting Ships in distress.

By *Señ. 7.* This Act shall not hinder any Person from assisting a Ship in Distress.

Masters, &c. appointed to examine into the Ability of Pilots, shall be sworn.

By *Señ. 8.* The Master and such two Wardens of the Society, as shall be appointed to examine any Person on his being admitted a Pilot, shall take the following Oath, to be given by the Register of the Court of Loadmanage, viz,

The Oath.

I A. B. do swear, that I will impartially examine and enquire into the Capacity and Skill in the Art of Pilotage over the Flats, and round the Long Sand Head, and the Coasts of Flanders and Holland, and will make true and speedy Return thereof to the Lord Warden of the Cinque Ports for the time being, or his Deputy, without Favour, Affection, or Reward.

So help me God.

Not to extend to the Corporation of Trinity-House of Deptford Strand.

By *Señ. 9.* This Act shall not extend to the taking away any Liberties vested in the Corporation of the Trinity-House of Deptford Strand.

To be taken as a public Act.

By *Señ. 10.* This Act shall be a public Act.

N. B. This Statute is continued to March 25, 1778, by Stat. 4 Geo. 3. c. 12. *Señ. 1.*

Clause empowering the Lord Warden of the Cinque Ports, with the Assent of the Commissioners of Loadmanage,

By Stat. 7 Geo. 2. c. 21. *Señ. 14.* The Lord Warden of the Cinque Ports, or his Deputy, with the Assent of the Commissioners of Loadmanage, and of the Masters and Wardens of the Society of Pilots of the Trinity-House of the Cinque Ports, at a Court of Loadmanage, may, during the Continuance

ance of 3 Geo. 1. c. 13. make Rules and Orders for the better Government and Regulation of the Pilots residing at *Dover, Deal,* and the Isle of *Thanet*, and may order a sufficient Number of them, not less than eighteen, to ply constantly at Sea, to be ready to conduct Ships up the Rivers of *Thames* and *Medway*; and the Lord Warden, &c. at a Court of Loadmanage, may suspend or deprive any of the said Pilots for breaking the said Rules or Orders; and if any Pilot, during such Suspension or Deprivation, shall take upon himself to conduct any Ship by or from *Dover, Deal,* or the Isle of *Thanet*, to any Place upon the Rivers of *Thames* or *Medway*; he shall be liable to all Penalties provided by the said Act, against such Persons as shall conduct Ships from and to the Places aforesaid, without being first examined and approved of by the Master and Wardens of the said Society.

N. B. Continued as the above Stat. of 3 Geo. c. 23.

IV. *Wharfage* is Money paid for landing Wines at a Wharf, or for shipping or taking in Goods into a Boat or Barge; they commonly keep Boats or Lighters of their own for the carrying out and bringing in of Goods, in which, if a Loss or Detriment happens, they may in some Cases be made liable.

An Action of the Case grounded on the Custom of the Realm, was brought against the Defendant, Master of a Wharf, for not safe delivering of Goods, &c. The Case appeared to be thus: The Master unladed a Bail of Silk into the Warfinger's Lighter, and sent part of his Mariners to convey it ashore; it happened that the Goods were

Randall v. Hilton and Butler, Pasch. 26 Car. in stole: B. R.

stole : The Question was, whether the Wharfinger or the Master should answer ? Upon a Trial at *Guiddhall* before the Lord Chief Justice *Hale*, it was there ruled, That the Master was liable, and not the Wharfinger, for till they are landed, the Master hath them under his Power : But if Goods are to be sent aboard, there if they miscarry in their Passage the Wharfinger must answer.

32 H. 8. 14.

V. *Primage* and *Petty-Lodmanage* is likewise due to the Master and Mariners for the Use of his Cables and Ropes to discharge the Goods, and to the Mariners for loading and unloading of the Ship or Vessel ; it is commonly about twelve Pence *per* Tun.

Leg. Oleron,
cap. 10.

If the Ropes break in hoisting of Goods out of the Ship into the Lighter or Boat, the Master must answer if the Goods be damaged or lost.

But if the Ropes break at the Crane in taking them out of the Lighter, (although till they are landed they are not out of the Master's Custody) yet the Wharfinger shall answer.

Some conceive that the Average mentioned in the Bills, is that which is the Average or Contribution for losses.

VI. *Petty Average* is another little small Duty which Merchants pay to the Master, when they only take Tunnage over and above the Freight ; the which is a small Recompence or Gratuity for the Master's Care over the Lading ; and in the Bills of Lading they are expressed after Freight, together with *Primage* and *Average* accustomed.

The *French* Ships commonly term the Gratuity *Hat-money*, and our *English* Merchants pay it our Masters over the Freight ; it is sometimes more, sometimes less ; two or three Pieces.

VII. *Loadman*

VII. *Lodfman* is he that undertakes to bring a Ship safe through the Haven to the Key or Place of Discharge; and if through his Ignorance, Negligence, or other Fault, *Roughton Ar-* he suffereth the Ship or Merchandise to pe- *tic Enquiry,* rish, an Action lies against him at the *Com-fol. 27, 28.* *mon-Law*; and so by some conceived he may be punished in the Admiralty, but not in both.

The Hire is called *Lodmanage*, the which the Pilot receives of the Master for conducting the Ship up the River, or into the Port to her convenient Berth.

If two Ships lie in a Harbour, and the Anchor of one is feared may occasion Damage to the other, after request and refusal (and there be probable Cause) the other may take up the Anchor, and let the same down at a further Distance, and the same if opposed or hindred, and any Damage happen thereby, they are to make full Satisfaction; so it is *Per Leg. Ole-* if they lay out an Anchor, and neglect the *ron, cap. 15.* placing of a Buoy to the Anchor, and Damage happen thereby, they are not only subject to be punished in the Admiralty, but likewise to render Satisfaction to the Party damnified.

If two Ships be in the River, and the one falls foul on the other, both being laden, by the Law Marine the Contribution is to be in common, and to be equally divided and appraised half by half; but then the *Mariners Per Leg. Ole-* must swear there was no Fault in them: For *ron, cap. 14.* otherwise one that hath an old rotten Vessel, which he can no ways dispose of, may so order the Matter, as to lay her in the way of a good Ship under Sail, so that the same may be answered in Damage: But when the Contribution

Contribution is made equal, then the Contrivance will be avoided; but at the *Common Law* there can be no such Judgment, for one of them must be found guilty; and if so, he must answer the other's Damage, and for his own he may sit down by the Loss.

C H A P. X.

Of Bills of Exchange.

- I. *Of the Antiquity of Exchange by the Hebrew Law.*
- II. *Of the Antiquity of Exchange by the Romans.*
- III. *Of Exchanges by other Nations in imitation of those People.*
- IV. *Of the several sorts of Exchanges, and of Cambio commune.*
- V. *Of Cambio real, or Exchanges value for value.*
- VI. *Of Cambio sicco, or dry Exchanges.*
- VII. *Of Cambio fictitio, or feigned Exchange.*
- VIII. *Of the Exchanges used this day, and on what.*
- IX. *How Exchanges are made, and upon Monies in London.*
- X. *Monies paid generally, how repaid by Exchange, how an Action shall be brought for Guineas or Foreign Coin.*
- XI. *Of Bills of Exchange payable at single Usance.*
- XII. *Bills of Exchange at double or treble Usance, and of the customary Usances to certain places from London and Amsterdam to other places.*
- XIII. *Of the nature of Bills of Exchange, and how esteemed of by the Laws of England.*
- XIV. *Bills drawn more than one, no prejudice to the Parties; and of the true measure of judging on Bills by Custom.*
- XV. *What amounts to an acceptance generally, and on refusal where to be protested. Indebitat. Assumpsit upon a general Acceptance.*

XVI. *All*

XVI. *All the Drawers are made liable; and whether the Party to whom the Money is made payable, is bound to procure an Acceptance.*

XVII. *Protest, what is meant by the same; and where the same is necessary, and where not. Protest upon the Stat. of 9 & 10 Will. 3. cap. 17.*

XVIII. *Bill drawn on two Persons, where the same is necessary, and where not*

XIX. *One Factor serves a Company, where a Bill of his accepted by one of the Company, obliges the rest, and where not.*

XX. *What words amount to an Acceptance, and what not.*

XXI. *Where a Bill may be accepted for part, and what must be done with the Bill thereupon.*

XXII. *When a Countermand may legally be made, and when not.*

XXIII. *How the several Parties interested in a Bill of Exchange are obliged and fettered to each other.*

XXIV. *How a collateral Security may be annexed to a Bill, when the time is elapsed, for Non-payment.*

XXV. *Where the Protest is only necessary to be kept, and where that and the Bill must both be remitted.*

XXVI. *Bill lost, what is necessary for the Parties interested in such case to act.*

XXVII. *Of blank Endorsements, the validity of the same.*

XXVIII. *A Bill once accepted, whether the same may be revoked; and whether it may be accepted to be paid at a longer time than is mentioned: And what Protests are then necessary to be made.*

XXIX. *Of Bills accepted for the honour of the Drawer, where the same shall oblige.*

XXX. *The time customary allowed for payment after failure of payment at the day.*

XXXI. *Of the Validity of speedy Protests in relation to recover the Money to be paid on the Drawer.*

XXXII. *Bill accepted, and before the Day of payment the Acceptor is failing, what's necessary to be done in reference to the obtaining better Security.*

XXXIII. *Bills accepted for the honour of the Drawer, where turned into an Act, and remitted by him that gives honour to the Bill.*

XXXIV. *The*

XXXIV. The Acceptor ready to pay, but the Party to whom made payable is dead, what is necessary.

XXXV. Causes general for a Protest, and where satisfaction to the Deliverer discharges all Parties.

XXXVI. Of Exchange by way of Credit.

XXXVII. One pays a Bill before it be due, and the Party to whom the same was paid, fails, where he shall be answerable to the Drawer notwithstanding.

XXXVIII. Of Bills assignable over according to the Customs of Merchants, what Operation in England.

XXXIX. Where an Averment is necessary of Defendant's being a Merchant.

I. **T**HE Exchange for Monies is of great Antiquity as well by Observation of the Hebrew Customs, as those of the Romans.

Upon the first of the Month *Adar*, Proclamation was made throughout all *Israel*, That the People should provide their half *Shekels*, which were yearly paid towards the Service of the Temple according to the Commandment of God; on the 25th of *Adar*, then they brought *Tables* in the Temple, (that is, into the outward Court where the People stood) on these *Tables* lay the lesser Coins, which were to furnish those who wanted half *Shekels* for their Offerings, or that wanted lesser Pieces of Money in their Payment for *Oxen*, *Sheep*, *Doves*, and the like, which stood there in readiness in the same Court to be sold for *Sacrifices*; but this Supply, and furnishing the People from those *Tables*, was not without an Exchange for other Money, or other Things in lieu of Money, and that upon Advantage: Hence all those that sat at the *Tables* were called chief *Bankers*, or Masters of the Exchange.

Exod. xxx.
31.

Moses Kotsen-
ses, printed at
Venice, Anno
1557, de *Sic-*
lis, fol. 122.
Col. 2.

II. By

II. By the *Romans* it is supposed to be in use upwards of 2000 Years, Monies being then selected out of the best of Metals, to avoid the tedious Carriage of Merchandize from one Country to another: So other Nations imitating the *Jews* and *Romans*, erected Mints, and coined Monies, upon which the Exchange by Bills was devised, not only to avoid the Danger and Adventure, but also its troublesome and tedious Carriages.

*Alex. Gen-
dier, lib. 5.
cap. 30.*

III. Thus Kingdoms and Countries having by their Sovereign Authorities coined Monies, caused them to appoint a certain Exchange for Permutation of the various Coins of several Countries, without any transportation of the Coin, but giving *par pro pari* or *value for value*; with a certain Allowance to be made those *Exchangers* for accommodating the Merchants.

IV. As Commerce became various, so Exchange numerous; but generally reduced to four, *Cambio commune*, *Cambio real*, *Cambio ficco*, and *Cambio ficticio*.

Cambio commune in *England*, was those that were constituted by the several Kings, who having received Monies in *England*, would remit by Exchange the like Sum to be paid in another Kingdom. *Edward* the Third, to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of *England*, declaring the Values of all or most of the foreign Coins of those Countries where his Subjects held Correspondence or Commerce, and what Allowances were to be made for having Monies to be remitted to such Countries or Kingdoms.

*Reg. Orig.
194. Stat. 5.
R. 2. cap. 2.
3 H. 7. 6.*

V. *Cambio real*, was when Monies were paid to the Exchanger, and Bills were drawn, with-
out

*18 E. 3.
Atton Burnel.*

out naming the Species; but according to the Value of the several Coins, which two Offices afterwards were incorporated, and indeed was no more, but upon Payment of Monies here in *England* to be repaid the just Value in Money in another Country, according to the Price agreed upon between the Officer and Deliverer, to allow or pay for the Exchange of the Money, and the Loss of Time.

VI. *Cambio ficco*, or dry Exchange, is when a Merchant hath Occasion for 500 *l.* for a certain Time, and would willingly pay Interest for the same; the Banker being desirous to take more than the Statute gives, and yet would avoid the same, offers the 500 *l.* by Exchange for *Cales*, whereunto the Merchant agrees; but the Merchant having no Correspondence there, the Banker desires him to draw his Bill to be paid at double or treble Usance at *Cales*, by *Robin Hood*, or *John a-Nokes* (any feigned Person) at the Price of Exchange then current; accordingly the Merchant makes the Bill, and then the Banker pays the Monies; which Bill the Banker remits to some Friend of his to get a Protest from *Cales* for Non-acceptance, with the Exchange of the Money from *Cales* to *London*, all which with Costs, the Merchant is to repay to the Banker; sometimes they are so conscientious, as not to make above 30 *per Cent.*

VII. *Cambio flitio*, when a Merchant hath Occasion for Goods to freight out his Ship, but cannot well spare Money; the Owner of the Goods tells him he must have ready Money; the Buyer knowing his Drift, it is agreed, that the Seller shall take up the Monies by Exchange for *Venice*, or any other Parts;

The Usury
was first introduced by
the Jews here
in *England*.
Vide 2 Inst.
506.

parts; but then the Merchant must pay for exchange, and re-exchange.

So likewise where the Merchant is become indebted to the Banker, they are contented to stay, the Merchant paying exchange and re-exchange; the which he will most certainly compel him to do.

These two last ways of grinding the Face of the generous Merchant was afterwards prohibited, but notwithstanding it was found impossible to moderate the inequality of Exchanges, and to have value for value: So that at this day it seems to be a Cold that many an honest Man is apt to catch.

VIII. The just and true Exchange for Monies that is at this day used in *England*, (by Bills) is *par pro pari*, according to value for value; so as the *English* Exchange being grounded on the weight and fineness of our own Monies, and the weight and fineness of the Monies of each other Country, according to their several Standards proportionable in their valuation, which being truly and justly made, ascertains and reduces the Price of Exchange to a Sum certain for the Exchange of Monies to any Nation or Country whatsoever: As for instance,

If one receives 100 *l.* in *London* to pay 100 *l.* in *Exeter*; this by the *par*.

But if a Merchant receives 100 *l.* in *London* to pay 100 *l.* at *Paris*, there the Party is to examine and compare the *English* weight with the weight of *France*, the fineness of the *English* Sterling Standard with the fineness of the *French* Standard; if that at *Paris* and that at *London* differ not in proportion, then the Exchange may run at one Price, taking the Denomination according to the Valuation of the

Monies of each Country; but if they differ the Price accordingly rises or falls: And the same is easily known, by knowing and examining the real fineness of a *French* 5*s.* Piece and an *English* 5*s.* Piece, and the difference, which is to be allowed for the want of fineness or weight, which is the Exchange; and so proportionably for any Sums of Monies of any other Country, the which is called *Par*, or giving value for value.

But this Course of Exchange is of latter Years abused, and now Monies are made a meer Merchandize, and does over-rule Commodities, and Monies rise and fall in Price according to the Plenty and Scarcity of Money.

IX. As Money is the common Measure of Things between Man and Man within the Realm, so is Exchange between Merchant and Merchant within and without the Realm; the which is properly made by Bills when Money is delivered simply here in *England*, and Bills received for the Repayment of the same in some other Country, either within the Realm or without the Realm, at a Price certain, and agreed upon between the Merchant and the Deliverer. For there is not at this Day any peculiar or proper Money to be found in *Spetic*, whereupon outland Exchanges can be grounded; therefore all Foreign Coins are called imaginary.

At *London* all Exchanges are made upon the Pound Sterling of 20*s.* and 12*d.* to the Shilling; for *Germany*, *Low-Countries*, and other Places of Traffick; and for *France* upon the *French* Crown: For *Italy*, *Spain*, and some other Places, upon the Ducat: For *Florence*, *Venice*, and other Places in the *Streights*, commonly by the Dollar and Florin.

Note,

Note, in an Action on the Case upon a *2 Bulst. 53.* Bill of Exchange, it was said in *Vernat* against *54. Debyste*, Special Bail is not required in a Writ of Error by the Stat. of *3 Jac. 1. cap. 8.* because an Action upon the Case is not within that Stat. but only Actions of Debt; for had this been aided by *3 Jac. 1.* there needed no provision by the Stat. of *Car. 2. 16, 17 Car. 2. 1. 8. 5. 3. 2 Keb. 234.*

X. Bills drawn to be paid, are either at Sight, or a time certain, single, double or treble Usance, and are commonly about three, for fear of any Miscarriage.

The taking and delivering Money at sight binds the Taker up to give his Bill to pay at sight, or within some short time, the like sum after such a Rate the Pound, Dollar, Ducat or Crown, as is agreed between them in Foreign Coin, either according to the Valuation of Monies, or current Monies for Merchandize.

See what Action and how shall be brought for Guineas, Foreign Coin, in *Pope* and *S. Guineas, Fe- Leger's Case, 1 Lutwytch 384. 1 Leon. 41. reign Coins. Carth. 322. Wilshalge* against *Dawidge. 3 Cro. 4 Mod. 409. 536. Bayshaw* against *Playn. 2 Cro. 617. Rands v. Peck. Latch, 77, 84. Ward's Case.*

XI. The second time of Payment is called Usance; it is known or taken to be the Compass of one Month, to be computed from the date of the Bill, and that governed according *Salk. 135.* to the Custom of the Place where those Exchanges do run. For which Reason in an Action on a Bill of Exchange payable at Usance, the Plaintiff must shew what the Usance is.

XII. The third is double or treble *Ufance*, two or three Months : Sometimes there are Exchanges made upon half *Ufance*.

The times of Payment do alter the Price of Exchanges according to time.

Ufance from London to	{ <i>Middleborough</i> <i>Amsterdam</i> <i>Antwerp</i> <i>Bruges</i> <i>Rotterdam</i> <i>Lifle</i> <i>Roan</i> <i>Paris</i> }	{ And all <i>France</i> , <i>Flanders</i> , and <i>Hol-</i> <i>land</i> , is generally ac- counted one Month's time from the Date of the Bill. }	The Bills may have a larger, some- times a short- er time, there is no direct certainty, but only that sin- gle <i>Ufance</i> is a Month, double <i>U-</i> <i>fance</i> two Months, &c.
Ufance from <i>Am-</i> <i>sterdam</i> to	{ <i>Rome</i> <i>Genoa</i> <i>Venice</i> <i>Naples</i> <i>Palermo</i> <i>Lucca</i> <i>Seville</i> <i>Lisbon</i> }	{ And all <i>Italy</i> , <i>Spain</i> , and <i>Portugal</i> , is ge- nerally accounted two Months from the Date, &c. }	
Ufance from London to	{ <i>Florence</i> <i>Venice</i> <i>Legborn</i> <i>Zant</i> <i>Aleppo</i> <i>Lucca</i> }	{ is sometimes account- ed treble <i>Ufance</i> from the Date of the Bill. }	

XIII. *Excambium vel Cambium*; or, as the Civilians term it, *Permutatio*; *Billa Excambii* signifies no more but a customary Bill, solemnized by numerous consent of Traders, to have a Respect more than other Bills, though of as high and as intrinsical a Value: And those that give such Bills are called *Exchangers* or *Bankers*.

Reg. Orig.
fol. 194.
Stat. 5. R. 2.
cap. 2.

Though the Act was no more but to keep up the Life of Commerce, (without which it is impossible for any Nation to flourish) yet could not any Person draw such Bills, or re-
 turn

turn Money beyond Seas, without Licence first obtained of the King. But at this day any Man may do it without being obliged to obtain such leave.

Where there are two joint Traders, and *L. Raym.* 175. one of them subscribes a Bill for himself and Partner, it binds both.

A Bill drawn upon *B.* requiring him to pay *C.* seven Pounds every Month, out of the growing Subsistence of the Drawer, was adjudged to be no Bill of Exchange. 10 *Mod.* 294. 316. *Fortesc.* Rep. 281. 2 *L. Raym.* 1362, 1481, 1482. *Stra.* 24, 219, 591, 592. 2 *Stra.* 762.

Note, There is not the same Strictness requisite in penning of Bills current between Merchant and Merchant, as in Deeds, &c. 10 *Mod.* 287.

There are no precise Words necessary to be used in a Bill of Exchange, but that *deliver such a Sum of Money*, makes a good one. 2 *L. Raym.* 1397. *Holt.* Ch. Just. seemed to think, that "I promise to pay the Bearer 20 *l.* on Demand was not a Bill of Exchange. 12 *Mod.* 380.

A Bill drawn on the Cashier of a Company, for him to pay out of the Company's Cash, is not a Bill of Exchange, 8 *Mod.* 265. *Stra.* 591. 2 *L. Raym.* 1361. See *id.* 1482. because it was no more than a private Order to a Man's Servant. 2. *Stra.* 762. But one payable out of the Drawer's half yearly Pay by Advance is good. 2 *L. Raym.* 1481. 2 *Stra.* 762. *Barnard.* R. B. 12. but not one payable out of the fifth Payment when due. 2 *L. Raym.* 1563.

An. Authority to receive Money to the Drawer's use, no Bill of Exchange. 4. Vin. Abr. 241. pl. 20.

The Bill must be for "*Value received*," 2. Stra. 1211. But according to *Show. Rep. 5. Fortesc. Rep. 282. Barnard. R. B. 88. and 8 Mod. 267.* there does not seem any occasion for "*Value received*" to be in the Bill itself.

*Salk. 130. 3.
Salk. 67.*

There is no material Difference whether a Bill be drawn payable to *the Order of A, or Order*: For upon Acceptance, *A.* may maintain his Action in the one Case as well as the other. 10 *Mod. 286.*

XIV. Such a Bill being drawn, they commonly take one or two more of the same date word for word, only this Clause is inserted in the second, *My first of the same Date, Persons and Sum not being paid*: And in the third, *My first and second of the same Date, and contents not being paid.*

*L. Raymond
816.*

The Declaration ought to aver, that the second and third are not paid (*& vice versa* come semble) but this may be aided by Verdict, though ill upon a Demurrer.

*Consuetudo
quandocunque
pro lege ser-
vatur, saith
Brazon, in
partibus ubi
fuerit more
utentium ap-
probata; lon-
gæ enim tem-
poris usus &
consuetudinis
non est vilis
authoritas,
lib. 1. cap. 3.*

The right Measure of judging on Bills of Exchange, is purely by the laudable Custom often reiterated, by which means the same hath obtained the force of a Law, and not the bare and single Opinion of some half-fledged Merchants: For Bills of Exchange are things of great Moment as to Commerce, and are neither to be strained so high, as that a Man should not cast his eye on them, but the same shall be taken to be an *Acceptance*: Nor on the other hand, having duly accepted them, the same should be rashly and unadvisedly avoided, by the shallow fancy of such nimble-pated Shufflers; but they are soberly judged

judged and governed, as the same hath generally been approved of, and adjudged of in former Ages.

XV. A Bill being remitted, the Party is to go immediately to the Person to whom the same is directed, and present the same in order to his Acceptance; if it be tendred, and the Party subscribes *Accepted*; or *Accepted by me A. B.* or being in the Exchange says, *I accept the Bill, and will pay it according to the Contents*; this amounts without all Controversy to an Acceptance.

But if the same be refused, the Party must then procure a *Protest*, and remit the same to the *Deliverer*, who is to resort to the *Drawer* for Satisfaction for the Principal, Costs, and Damage.

Words are made to signify things; by the word *Deliverer* is meant he that draws the Money beyond Sea. By the word *Drawer*, he draws the Bill of Exchange; the Person upon whom, is called the *Acceptor*.

The Drawing a Bill of Exchange is an actual Promise. L. *Raymond* 538.

Acceptance after the Day of Payment past is usual, and good. L. *Raymond* 364. *Com. Rep.* 75. *pl.* 49. *12. Mod.* 410. *212.* L. *Raym.* 574. So Acceptance for the Honour of the Drawer. L. *Raym.* 575.

Three Days of Grace are allowed upon Foreign Bills, unless the third Day be *Sunday* or *Christmas-Day*, &c. and then only two Days. L. *Raymond* 575, 473. No such Custom for inland Bills, *Idem* 743. Goldsmiths Notes to be received immediately. *Idem* 744. 2 L. *Raym.* 757, 759, 774.

The Question whether a general *Indebitat.* *Hard.* 485. *Assumpsit* will lie upon a bare Acceptance of a Bill of Exchange, in the Argument of the Case of *Bellasis* and *Hester*. By Justice *John Powel*, a general *Indebitat.* *Assumpsit* does.

not lie on a Bill of Exchange; but it ought to be a special Declaration upon the Custom of Merchants, as in the Case of *Brown and London*. 1 *Levinz* 298. 1 *Mad.* 285. 2 *Keble* 695, 731, 758, 822. 1 *Vent.* 152. In which Case, Judgment was arrested after Verdict, as reported by *Levinz* and *Ventris*.

In the Case of *Bromwich and Lades*, it was said by the Chief Justice *Treby*, that Bills of Exchange were of such general Use and Benefit, that upon an *Indebitat. Assumpsit*, a Bill of Exchange may be given in Evidence to maintain the Action; and by Mr. Justice *Powel*, that upon a general *Indebitat. Assumpsit*, for Monies received to the use of the Plaintiff, such Bill may be left to the Jury to determine, whether this was for Value received or not. In this Case the Declaration was on the Custom of Merchants, and a general *Indebitat. Assumpsit* thereon. See the Declaration and Exceptions to it, in the said Case of *Bellasis and Hester*, in 1 *Lutwych*, 1589.

By the Stat. of the 9th and 10th of *Will.* 3. cap. 17. It is enacted that after the 24th of *June* 1698. All Bills of Exchange drawn in, or dated at, and from any place of this Kingdom, of the Sum of 5 *l.* or upwards upon any Person in *London*, or any other trading City, Town or Place (in which Bills, the value shall be expressed to be received) drawn payable at a certain time, after the Date thereof, may after Acceptance in Writing, and the expiration of three Days after the same shall be due, be protested by a Notary Publick, or in default of such Notary Publick, by any other substantial Person of the Place before two Witnesses; refusal or neglect being first made of due Payment; which Protest shall be

be made under a Copy of the Bill, in the form prescribed by the Act, and shall be notified within 14 Days after, to the Party from whom the Bills were received, who (upon producing such Protest) is to repay the said Bills with Interest and Charges from the Protesting; for which Protest there shall not be paid above 6 *d.* And in Default of such Protest, or due Notice thereof, the Person so failing shall be liable to all Costs, Damages and Interest thereupon. Provided that if any such Inland Bills be lost, or miscarry within the time limited for Payment of the same, the Drawer of the said Bills shall give other Bills of the same Tenor, Security being given to indemnify *Salk. 128.* him; in Case the said Bills so lost or miscarried be found again.

A Writ of Error was brought on a Judgment by *Nil dicit*, in an Action against the Drawer of an Inland Bill of Exchange; and it was objected, that since the Act of 9 *W. 3.* no Damages shall be recovered against the Drawer upon a Bill of Exchange without a Protest, and therefore the Action lies not, there being no Protest.

But *Holt C. J.* The Statute never intended to destroy the Action for want of a Protest, but only to deprive the Party of recovering Interest and Costs upon an Inland Bill against the Drawer without Notice of Non-payment by protest; for before the Statute there was this Difference between Foreign and Inland Bills of Exchange: If a Bill was foreign, one could not resort to the Drawer for Non-acceptance or Non-payment without a Protest, and reasonable Notice thereof; but in Case of an Inland Bill, there was no occasion for a Protest, but if any Prejudice happened to the
Drawer

Drawer by the Non-payment of the Drawee, and that for want of Notice of Non-payment, which he to whom the Bill is made ought to give, the Drawer was not liable; and the Word *Damages* in the Statute, was meant only of Damages that the Party is at, by being longer out of his Money by the Non-payment of the Drawee, than the Tenor of the Bill purported, and not of Damages for the original Debt: And the Protest was ordered for the Benefit of the Drawer; for if any Damages accrue to the Drawer for want of Protest, they shall be borne by him to whom the Bill is made; and if no Damages accrue to him, then there is no Harm done him, and a Protest is only to give formal Notice that the Bill is not accepted, or accepted and not paid; and if in such Case the Damage amount to the Value of the Bill, there shall be no Recovery, but otherwise he ought not to lose his Debt; but that ought either to appear by Evidence upon *Non Assumpsit*, or by special Pleading; and the Act is very obscurely and doubtfully penned, and we ought not by Construction upon such an Act to take away a Man's Right. And the Judgment was affirmed *per totam Curiam*.

What Actions lie upon a Bill of Exchange, and how to be brought, and against whom. See *Hardress* 487. in *Scaccario*, and *Brown* and *London's Case*, 1 *Mod.* 285. 1 *Levinz.* 298. and 2 *Keble* 695, 113, 153, 322. and the Case of *Cramlington* against *Evans* and *Percival*, 2 *Vent.* 307. *L. Raym.* 175, 364, 574. *Cartb.* 5. *Skin.* 264. 1 *Show.* 4.

Acceptance of a Bill of Exchange may be pleaded as Payment in Bar of an Action of Account. 10 *Mod.* 37,

Where

Where the Drawee first accepts, and then suffers the Bill to be protested, he shall pay Interest from the Time of the Protest, 10 *Mod.* 37.

If a Bill be accepted and afterwards indorsed to the Drawer, he may maintain an Action as Indorsee, in case he had Effects enough in the Hands of the Drawee, to answer the Bill; but it is otherwise where the Acceptance was only for the Honour of the Drawer. 10 *Mod.* 37.

A. draws a Note upon a Goldsmith, and sends his Servant to receive the Money, and invest it in Exchequer-Bills; the Servant gets *B.* to give him Money for the Note, and then brings the Exchequer-Bills to his Master, and two Days afterwards the Goldsmith fails; it was adjudged that *A.* must answer the Money to *B.* for the Property of the Note was not transferred to *B.* there being no Indorsement, and he could not have sued upon it; it was only in the Nature of a Pledge or Security to him. 10 *Mod.* 109.

A Bill was drawn on the *York-Buildings Company*, one *Bishop*, who was their Cashier, accepts it without writing for the Company, or any Thing to that Effect: An Action was maintained against him in his private and single Capacity upon this Acceptance. 3 *Bac. Abr.* 563. 2 *Str.* 955. 2 *Barnard, K. B.* 320. 2 *Kel.* 136. *pl.* 116.

XVI. If there be several Drawers who subscribe, all are liable in case of a Protest.

If a Bill is drawn upon a Merchant in London payable to *J. S.* at double Usance, *J. S.* is not bound in Strictness of Law to procure an Acceptance, but only tender the Bill when the Money is due: But Merchants, who generally have generous Spirits, will not surprize a Man, but first procure an Acceptance, or at least leave the Bill for the Party to consider. Nor is any such thing as a three Days respite to be allowed for Acceptance.

sider and give his Answer, and then give Advice of the same, and if the Money be not paid, then protest.

Note, the *Stat.* 3 & 4 *Ann. ch.* 9. having given like Remedy upon promissory Notes, as upon inland Bills of Exchange; it was resolved, that an Action lies by a second Indorsee upon a Note, whereby the Defendant promised to be accountable to *J. S.* or Order, for 100 *l.* Value received. *L. Raymond* 1396. 8 *Mod.* 362. *Stra.* 629.

A Note Value received *de premissis* in *Rosemary-lane*, was adjudged a good Note within the Statute. *Idem* 1545.

A Note payable so many Days after Marriage is not good. 2 *Stra.* 1151. but one payable two Months after a Ship is paid off, is. *Str.* 24. One to pay or deliver the Body of *J. S.* is not. *Gilb. Cas.* 932. *L. Raym.* 1362. 1396. 4 *Com. Dig.* 198. One to pay to *A.* for Value received, is, tho' without the Word "Order." *Sel. Cas. Evid.* 18. To pay if his Brother did not, is not. 8 *Mod.* 363. Nor to pay in three *East-India* Bonds, 4 *Com. Dig.* 198. but payable so many Days after the Death of the Drawer's Father, is. 2 *Stra.* 1217. But a Note in the Name of *two*, signed by *one* only, promising to pay on the Death of *G. H.* "provided he leaves either of us sufficient to pay the said Sum, or if we shall be otherwise able to pay it," is not. *Bur. Rep.* 325, 326. One given to an Infant, payable when of Age, is good. *Bur. Rep.* 227, 228. But not to deliver up Houses, and a Wharf, and pay Money. 2 *Stra.* 1271. But one to pay for the Debt of another, is. *Str.* 264. So is one to pay at the Payment of the Ship *Devonshire* for Value received. "I ac-

“ I acknowledge, that Sir *A. C.* had delivered me all the Bonds and Notes, for which 400 *l.* were paid on Account of Colonel *S.* and that Sir *A.* delivered me Major *G.*'s Receipt and Bill on me for 10 *l.* which 10 *l.* and 15 *l.* 5 *s.* Balance due to Sir *A.* I am still indebted, and do promise to pay.” Held to be a Note within the Statute. *Str.*, 756.

The Analogy between Promissory Notes and Bills of Exchange should be attended to, in order the better to understand the Cases; whilst the Promissory Note continues in its original Shape, there is none; but when the Note is indorsed the Resemblance begins; for then it is an Order to pay the Money to the Indorsee, and this is the very Definition of a Bill of Exchange; therefore the Indorsee, before he brings an Action against the Indorser of a Promissory Note, ought to demand the Money of the Drawer; but it must be made on the Drawee, before an Action is brought against the Indorser of a Bill of Exchange. 2 *Bur. Rep.* 676. 1224. 1227.

In an Action against the Indorser of a Note of Hand, where the Note was due the fifth, and there was no Demand on the Drawer till the eighth, and no Notice to the Indorser till the nineteenth: Mr. Justice *Dennison* thought the Plaintiff had not made Use of due Diligence, either in demanding the Money, or in giving Notice to the Indorser, and said, there were no Days of Grace on a Note, as there are on a Bill of Exchange; but the Jury said it was commonly understood, that there were three Days of Grace, and therefore thought the Demand was made in Time; but the Judge said the Law was otherwise,
and

and directed them to find for the Defendant. *Trials at Nisi Prius*. Quarto 258.

In an Action against the Indorser, Lord *Raymond* would not allow the Defendant to give in Evidence, that the Plaintiff desired him to indorse the Note to enable him to bring an Action against the Drawer, but declared he would not sue the Defendant; but where the Action was brought by the Drawee against the Drawer, the Defendant was let in to shew it was delivered as an Estrow, *viz.* as a Reward in case he procured the Defendant to be restored to an Office, which it being proved he did not effect, there was a Verdict for the Defendant: *ibid.* 259.

And it seems a reasonable Distinction, which has been taken between an Action and between the Parties themselves, in which Case Evidence may be given to impeach the Promise, and an Action by or against a third Person, *viz.* an Indorsee or an Acceptor. *id. ibid.*

Where the Defendant borrowed Money of *J. S.* who lent it knowingly to game with, and assigned the Note for a valuable Consideration to the Plaintiff, who had no Notice, yet it was holden void within 9 *Ann. c. 14.* *id. ibid.*

Not demanding the Money of the Drawer in a reasonable Time, is giving Credit; but what shall be deemed a reasonable Time must be left to the Jury upon the Circumstances of the Case.

The Defendant having a Promissory Note payable to him or Order, two Months after Date, indorsed it to the Plaintiff, who sent his Servant to the Drawer for the Money, who said the Defendant had promised not to indorse the Note over without acquainting him;

him; that he had not so done, and therefore he was not prepared to pay it; but promised Payment in three or four Days; and in the like manner put him off from Time to Time. After three weeks the Plaintiff wrote to the Defendant (not having sooner learnt his Directions, though it was proved he sooner inquired after it, and was told where he might learn it) that *Smith's* Note was not paid; that he had often promised Payment, but had alledged, that the Defendant promised not to make use of it without acquainting him first: *Smith* became a Bankrupt; the Plaintiff writes a second Letter; the Defendant answers, that when he comes to Town he will set that Matter to Rights; upon this Evidence the Jury gave a Verdict for the Plaintiff; notwithstanding it appeared *Smith* continued solvent three Weeks, and paid above an hundred Pounds in the Time. *Trials at Nisi Prius.* 261. See *Salk.* 132. pl. 19. *Str.* 508. 2 *Str.* 1175.

As the Reasonableness of the Time is a proper Consideration for the Jury, the Court will not interpose by way of granting a new Trial, unless the Jury grossly misbehave; as if they should find for the Plaintiff, where it appeared in Evidence, that he kept Banker's Bills from *April* to *August* before the Banker broke.

The Defendant had a Note of sixty Pounds of one *Bellamy*, Goldsmith, payable to him or Bearer, at a Day then to come, about a Week before which he discounted at the Bank without indorsing the Bill; *Bellamy* about two Months after broke without having paid the Bill, upon which the Bank brought *Assumpsit* for Money lent, and upon this Evidence

dence obtained a Verdict; but the Court granted a new Trial, holding it to be a Verdict against Law; for if the Owner of a Bill, payable to Bearer, deliver it for ready Money paid down for the same, and not for Money antecedently due, or for Money lent on the same Bill, this is selling of the Bill like selling of Tallies, &c. But if there be an Indorsement thereon, the Indorsee may have Remedy on that Indorsement, provided he demand the Money in convenient Time. *Trials at Nisi Prius.* 261.

In a Writ of Inquiry before the Sheriff, on a Judgment by Default in an Action on a Promissory Note, the Plaintiff must prove his Note the same, as if the Defendant had pleaded *Non assumpsit*; though (1) in Debt on Bond and Judgment by Default it is otherwise.—Yet according to 2 *Str.* 1149. the Court of K. B. held, that on executing a Writ of Inquiry on Judgment by Default in *Assumpsit*, upon a Promissory Note, it was not necessary to produce the subscribing (2) Witness, for the Note being set out in the Declaration, is (3) admitted, and the only Use of producing

(1) As there is no Writ of Inquiry in Debt, the Judgment in Default of a Plea being final, not interlocutory, the learned Judge's Observation seems erroneous.

(2) In an Action upon a Promissory Note, there being a subscribing Witness, Chief Justice *Pratt* would not allow any other to prove the Hand, without shewing where the Witness was, and that he could not be produced; and this, on the general Rule, that the Law requires the best Evidence the Thing is capable of. *Sel. Cas. Evid.* 76.

(3) Inquisition taken on a Writ of Inquiry of Damages set aside, for want of the Plaintiff's proving a Promissory Note set forth in the Declaration, the Plaintiff

producing it is, to see whether any Money is indorsed to be paid upon it; it must therefore be proved to be his Note, which may be by proving his Hand.

Though it be sufficient for the Plaintiff in an Action on a Note of Hand to prove the Note to have been given by the Defendant, yet the Defendant will be at Liberty to shew it was given on an illegal Consideration, and so avoid the Lien of it. *id.* 263.

The Indorsee declared, that the Defendant made his Note in writing, by which he promised to pay, &c. without saying that the Defendant signed it: This was held good, on Demurrer. 2 L. Raym. 1376, 1377.

So where the Declaration shewed that the Defendant made it for himself and his Partner, and signed it; whereby he promised for himself and his Partner to pay, &c. *Idem* 1484.

A Bill need not be expressly averred to be drawn according to the Custom of Merchants. *Idem* 1542.

An Action on a Note by which the Defendant and another promised jointly or severally, is ill. *Idem* 1544, 1545.

XVII. A Protest is no more but to subject the *Drawer* to answer in case of Non-acceptance, or Non-payment; nor does the same discharge the Party Acceptor, if once accepted; for the Deliverer hath now two Remedies, one against the *Drawer*, and the other against the *Acceptor*.

tiff's Attorney insisted, before the Sheriff and Jury, that the Note was admitted by the Defendant's suffering Judgment; and the Jury found the Sum mentioned in the Note for Damages, without any Proof, which was held unwarrantable. 2 Barnes's Notes Com. Pleas. 192

To entitle the Party to an Action at Law in *England* against the Acceptor, it matters not whether there be a Protest; but to entitle the Party to a Recovery against the Drawer beyond the Seas or elsewhere, there must be a Protest before a public Notary.

If a Merchant hath accepted a Bill, and before the same becomes to be due, he proves insolvent, or at least his Credit is publicly blasted, a Protest ought to go.

If a Merchant, to whom the Bill is payable, be absent, sick or like to die, any Friend or Servant of his may cause a Protest to be made.

2 *Keb.* 584.

A. draws a Bill upon *B.* to the Use of *C.* and upon Non-payment, *C.* protests the Bill; he cannot sue *A.* unless he gives Notice that the Bill is protested; for *A.* may have Effects of *B.* in his Hands, by which he may satisfy himself, *Vent.* 45.

If the Drawee refuses to accept the Bill, and it be of the Value of 20 *l.* or upwards, and expressed to be for Value received, the Payee or Indorsee may protest it for *Non-acceptance*; which Protest must be made in writing, under a Copy of such Bill of Exchange, by some Notary Public; or, if no such Notary be resident in the Place, then by any other substantial Inhabitant, in the Presence of two credible Witnesses; Notice of such Protest must, within fourteen Days after, be given to the Drawer.

But in case such Bill be accepted by the Drawee, and after Acceptance he fails or refuses to pay it within three Days after it becomes due (which three Days are called Days of Grace) the Payee or Indorsee is then to get it protested for *Non-payment*, in the same manner,

manner, and by the same Persons, who are to protest is in case of Non-acceptance; and such Protest must also be notified, within fourteen Days after to the Drawer; and he, on producing such Protest, either of Non-acceptance or Non-payment, is bound to make good to the Payee or Indorsee, not only the Amount of the said Bills, (which he is bound to do within a reasonable Time after Non-payment, without any Protest, by the Rules of the Common Law) (1); but also Interest, and all Charges, to be computed from the Time of making such Protest. But if no Protest be made or notified to the Drawer, and any Damage accrues by such Neglect, it shall fall on the Holder of the Bill. 2 *Black. Com.* 468, 469.

If any Person accepts such Inland Bill of Exchange in Satisfaction of a former Debt, the same shall be esteemed a compleat Payment of such Debt, if the Person accepting such Bill for his Debt doth not take his due Course to obtain Payment thereof, by endeavouring to get the same accepted and paid, and make his Protest, by Stat. 3 *An. c.* 9.

Formerly the Declaration need not have shewn a Protest upon such Bill, though the Drawer ought to have had convenient Notice of Non-payment. *L. Raymond* 992, 993. But the Law seems to be altered as to the Protest.

XVIII. A Bill drawn on two jointly must have a joint Acceptance, otherwise it must be protested; but to two or either of them, *Per Jasonem in lege allegatur. ff. de conditionibus indebiti.*
et contra.

(1) 2 *Lord Raymond*, 993.

Then if the same be accepted by one, it is pursuant to the tenor of the Bill, and ought not to be protested but in case of Non-payment; and in that case the Person Acceptor is liable to an Action; but if it be on joint Traders, an Acceptance by one will conclude and bind the other.

Salk. 126.
L. Raymond
175.

XIX. A Factor of the *Hamburg, Turkey, or India Company* draws a Bill on the same, and a Member accepts the same, this perhaps may make him liable, but not another Member.

So it is if ten Merchants shall employ a Factor at the *Canaries*, and the Factor draws a Bill on them all, and one of them accepts the Bill, and then refuses Payment; this will not oblige the rest.

But if there be three joint Traders for the common Stock and Benefit of all three, and their Factor draws a Bill on them, the Acceptance of the one will oblige the residue of the Company.

Winch. 24, 25.
Salk. 126.

XX. A small Matter amounts to an Acceptance, so that there be right understanding between both Parties: As *Leave your Bill with me, and I will accept it; or, Call for it to-morrow, and it shall be accepted*; that does oblige as effectually by the Custom of Merchants, and according to Law, as if the Party had actually subscribed or signed it (which is usually done.)

But if a Man shall say, *Leave your Bill with me, I will look over my Accounts and Books between the Drawer and me, and call to-morrow, and accordingly the Bill shall be accepted*, this shall not amount to a compleat Acceptance: For this mention of his Book and Accounts was really intended to see if there were Effects

in his hands to answer, without which perhaps he would not accept of the same. And so it was ruled by the Lord Chief Justice Hale at Guildball.

A Foreign Bill was drawn on the Defendant, and being returned for want of Acceptance, the Defendant said, *That if the Bill came back again he would pay for it*; this was ruled a good Acceptance, 3 Bac. Abr. 610. 4 Vin. Abr. 250. pl. 11.

The Drawee wrote a Letter to him in whole Favour the Bill was drawn, *That if he would let him write to Ireland first he would pay him*, and this was held a good Acceptance. Coram Raym. C. J. at Nisi Prius. Stra. 648. L. Raym. 444. 3 Bac. Abr. 610. Law of Bills, 28.

If the Party underwrites a Bill of Exchange, viz. "*presented such a Day*," or only the Day of the Month, it is such an Acknowledgment of the Bill, as amounts to an Acceptance, Comb. 401.

Acceptance of a Bill upon two by one Partner binds both, if it concerns the joint Trade; but otherwise, if it concerns the Acceptor only in a distinct Interest and Respect. Salk. 126. pl. 3. L. Raym. 175. 12 Mod. 345.

A Bill of Exchange may be accepted by Parol. 7 Mod. 87. Salk. 130. pl. 14. 12 Mod. 345. 2 Stra. 1000.

If a Merchant say, "*leave the Bill with me, and I will look over my Accounts between the Drawer and me, and call to-morrow, and accordingly the Bill shall be accepted*" this is no Acceptance, because it depends upon the Balance of Accounts. Trials, at Nisi Prius, 4to, 255.

An Acceptance may be qualified, as to pay half in Money, and half in Bills. 3 *Bac. Abr.* 611. *Comb.* 452. So to pay, when Goods sent by the Drawer are sold. 2 *Str.* 1132.

There may be a partial Acceptance of a Bill of Exchange. *Str.* 214.

Thereceiving of part of the Monies upon the Bill, does no ways weaken the Bills. *Trin.* 20. *Car.* 2. in *B. R.* XXI. A Bill may be accepted for part, for that the Party upon whom the same was drawn had no more Effects in his hands; which being usually done, there must be a Protest, if not for the whole Sum, yet at least for the Residue: However, after Payment of such part there must be a Protest for the Remainder.

Before the time of Payment of the Bill, the Party may notwithstanding accept it, and pay it at the time of Payment; or another may accept the Bill for the Honour of the Drawer, and if he pay it in default of the Party, yet before Payment he is bound to make a Protest, with a Declaration that he hath paid the same for the Honour of the Drawer, whereby to receive his Money again.

Per leg. publici in ff. depositi & per Bart. ibidem, & per Romanum singularem, fol. 474. XXII. Any time before the Money becomes due, the Drawer may countermand the payment, although the Bill hath been accepted. The Countermand is usually made before a Notary: but if it comes without, so it comes under the Party's hand, it is well enough.

If the Bill be accepted, and the Party desires to have the Money before it be due, and it is paid, and then there comes a Countermand, it hath been conceived that it ought not to be allowed; for as he could not enlarge the Time, so he could not shorten it, but his Duty is to follow his Order.

XXIII *Assumpsit*, and declares on the Custom of London, that if any Merchant or other Person

Person merchandizing in London, makes a Note in Writing under his Hand, and by this promiseth to pay any Sum of Money to a Person in it named, or to the Bearer; and if the Person in the Note named, to whom by the Note it was promised to be paid, assign or deliver it to another Person for to receive the Money to his own use, and he carries this to the Drawer of the Note, and requests him to pay the Money to him, then the Person that made the Note was chargeable to pay this to the Bearer. That the Defendant (being a Goldsmith) made such a Note, by it promising to pay a 100 l. to *W. B.* or the Bearer; and that *W. B.* delivered the Note to the Plaintiff to receive the Money to his own use, in satisfaction of 100 l. due to him by the said *W. B.* and that the Plaintiff carried it, and shewed it to the Defendant, and requested him to pay the 100 l. which he had not done; by which by the Custom he became chargeable, and so promised to pay. After Verdict for the Plaintiff, it was moved in Arrest of Judgment; that this Custom to pay to the Bearer was too general: For perhaps the Goldsmith before notice by the Bearer had paid it to *W. B.* himself, as in truth he had; and of such Opinion was the Court. *Horton vers. Cogge*, 3 *Levine*. 204. where see the Pleadings.

(a) If the Plaintiff recover against the Drawer of a Bill (though he has no Execution upon it) he shall not afterwards recover against any of the Endorsers. See the Case at large, *Glanville and Swift*, 3 *Mqd.* 86. *Shinner* 245. because the Recovery, without Execution, was no Satisfaction.

Drawer and Indorser.
(a) This judgment was reversed in the Exchequer Chamber.

L. Raymond
180, 181.

If a Goldsmith's Note be drawn payable to *Y. S.* or Bearer, the Bearer cannot maintain an Action for the Money, except in the Name of *Y. S.*

Note. The Drawer is bound to the Deliverer, and the Acceptor to the Party to whom the Bill is made payable; yet both are not bound to one Man, unless the Deliverer be a Servant to the Party to whom the Money is made payable; or the Party to whom the Money is made payable be Servant to the Deliverer: Yet both Taker and Acceptor are liable till the Bill is paid.

Style 370.

XXIV. Therefore when you bring your Action, be sure to draw your Declaration accordingly, and make the same part of the Custom as you set it forth; for if you vary, you must expect to be nonsuited: And the Party is not bound to alledge a particular Place of Demand.

See *L. Raymond 281.* That the Day of Acceptance shall be included in the Days allowed for Payment, unless there be a Custom of Merchants to exclude it; and then that ought to be pleaded. Q. Whether such Custom. See also *Idem 365.*

Salk. 127. pl.

12. Mod. 244.

Skin. 410.

2 Stra. 1087.

To make an Indorser liable to an Action, the Indorsee must in convenient Time demand the Money of the Person upon whom the Bill was drawn. *Ibid. 443, 444.*

Lord Chancellor *Hardwicke* said, there had been a Difference of Opinion amongst Judges; whether a Demand must be made upon the Drawer of a Bill of Exchange to intitle an Indorsee to an Action; but that he was very clear in his own Judgment, there was no Occasion to make that Demand, for he considered every Indorser as a new Drawer. *Atk. Rep.*

281. *pl.* 150. *Stra.* 441, 519. 2. *Bur.* Rep. 667.

If a Bill be returned protested for want of Payment, the Drawer is to repay the Money and Damage, or else he may procure a Security, which is no more but another Person of value subscribes the Bill, in these or the like words, *I here underwritten do bind myself as Principal according to the Custom of Merchants, for the Sum mentioned in the Bill of Exchange whereupon this Protest is made, dated, &c.*

Now the Drawer, by virtue of this supplemental Agreement, hath as much time again to pay Monies as there was given him in the Bill when it was first drawn; so that if the Money be not paid, together with the Rechange and Charges of the Party, the Party may recover the same on the Principal or Security.

XXV. Beyond the Seas the Protest * under the Notary's hand is sufficient to shew in Court, without producing the very Bill itself. But if a Bill in *England* be accepted, and a special Action grounded on the Custom be brought against the Acceptor, at the Trial the Party Plaintiff must produce the Bill accepted, and not the Protest; otherwise he will fail in his Action at that time.

* That is for not payment, the Bill being once accepted.

Therefore it is safe that a Bill once accepted be kept, and only a Protest for Non-payment be remitted; but a Bill protested for Non-acceptance must be remitted.

XXVI. If a Bill is left with a Merchant to accept, and he loses the Bill, (or at least it is so mislaid, that it cannot be found) the Party shall request the Merchant to give him a Note for the Payment according to the time limited in the Bill of Exchange; otherwise there must be two Protests, one for not Acceptance, the other

other for Non-payment: But if a Note is given for Payment, and there happens to be a failure, yet in that case there must be a Protest for Non-payment.

Salk. 128.

XXVII. A Bill is remitted to *J. S.* who owes Monies to *J. D.* *J. S.* delivers the Bill to *J. D.* and on the Back-side subscribes his Name; if *J. D.* receives the Monies, he may fill up the Blank, as if the Monies had been actually paid to *J. S.* This is practised amongst Merchants, and by them reputed firm and good. But certainly the *Common-Law* looks upon this filling upon of Blanks, after a Man hath once signed or sealed, to be no better than a harmless Forgery; but if there be either a general or special Authority to the purpose, it may then alter the Law.

By the Opinion of my Lord Hale, *Hill. 28. Car. B. R. at Guildball.*

Note, No Person, be it Wife or Servant, can accept of a Bill of Exchange to bind the Master without a lawful Authority, as a Letter of Attorney, and the like, which must be under Hand, unless that it has been formerly and usually done by the Wife or Servant in such case, when the Master hath been out of Town, who hath approved of the same and answered Payment: It must be usually done, but one Partner may for another.

Styles 370.

If an Indorsement be given in Blank, it may be filled up by the Indorsee, or by any one else, even in the Face of the Court, at the Trial. 2 *Bar. Rep. 1218. 1225. Com. Rep. 312.*

Where in the Declaration the Indorsement was set out to be for Value received, but being produced had it not: Lord Chief Justice *Eyre* allowed the indorsement to be filled up in Court, notwithstanding the Case of *Clements and Jenkins*, P. 3 *Geo. 2.* was cited, where Lord

Lord Raymond refused to let it be done.
Trials at Nisi Prius, 260.

A Servant of Sir Robert Clayton, and Mr. Alderman Morris, (but at that time actually gone from them) took up 200 Guineas of Mr. Monck a Goldsmith, without any Authority of his Master's; (but Monck did not know that he was gone) the Monies not being paid, Monck brought an Action against Sir Robert Clayton and Morris, and at Guildhall it was ruled per Keeling Chief Justice, That they should answer, and there was a Verdict for the Plaintiff. And though there were great endeavours to obtain a new Trial, yet it was denied, the Court at Westminster being fully satisfied that they ought to answer: For this Servant had used often to receive and pay Monies for them; and thereupon they actually paid the Monies.

Monck v. Clayton and Morris, Mich. 22 Car. 2. in B. R.

By Holt C. J. A Servant is sent to receive Money for a Bill; he can't accept of a Note instead of Money, without the particular Direction of his Master. *L. Raym. 930.*

A Note given in Payment, is intended to be taken under this Condition, that it be paid in convenient Time. *Ibidem. S. P. Q. if S. C. Esq; Abr. 375; 376.*

Note, That which will oblige the Master, will be the Authority and Liberty which he usually gives the Servant; therefore such a Power devolved, ought to be secured by the prudentest way that may be: Which is generally done by Bonds and Obligations.

And though the same seems an Act of Wisdom for Merchants and others so to take,

yet it oftentimes proves the Destruction of many a Family. The Father puts out the Son perhaps with no less than 2 or 300*l.* and is himself become bound for his Truth and just Accounting, &c. The Servant is immediately trusted with his Cash, and then he, too young to be experienced in the World, either neglects keeping a just Account,

Account, or keeping that, subjects his Master's Cash to be spent by himself and those who make it their sole Trade to betray such Youths. The Master finding the Consumption; calls his Servant to account, who, conscious of the Act, forsakes his Service, dares not see his Relations, and then, as a general Consequence, falls into Company, the which nothing but Providence can preserve from taking other wicked Courses. The Father is called to answer whatever the Servant hath spent or Imbezzled; he must with a Heart full of Grief submit to pay, besides the Loss of the Monies advanced upon the Servant's first putting forth; which sometimes proves a great Affliction in a Family. On the other Side, if Servants were not to be intrusted, the Mystery could not be learnt, nor the Business dispatched; and therefore Faith must be given: But then it were Justice and Honesty, that as a Father puts perhaps the Child of his Love to one in whom he reposes a Faith and Trust, that the Master should be then as a Parent, so they should prevent all Occasions that might subject them to Temptations, and not be over hasty in trusting them with the Cash. Which is the very Bait our *London* Gamesters catch such Gudgeons with.

If a Bill of Exchange by contrary Wind or other Occasions be so long on the Way, that the Usance or Time limited by the Bill be expired, and being tendered, both Acceptance and Payment are denied; Protests for both must be made, and the Drawer must answer the Value, Rechange and Damage.

Rastal, fol.

339.

Bald. in rubr.

de constit. pe-

cunia in ult.

Col. & leg.

quidem ff. co-

dem Col. pe-

mult.

XXVIII. A Bill once accepted, cannot be revoked by the Party that accepted it, though immediately after and before the Bill becomes due, he hath Advice the Drawer is broke.

If a Bill is not accepted to be paid at the exact Time, it must be protested; but if accepted for a longer Time, the Party to whom the Bill is made payable, must protest the same for want of Acceptance according to the Tenor; yet he may take the Acceptance offered notwithstanding. Nor can the Party, if he once subscribes the Bill for a longer Time, revoke the same, or blot out his Name, although it is not according to the Tenor of the Bill; for by his Acceptance he hath made himself

himself Debtor, and owns the Draught made by his Friend upon him, whose Right another Man cannot give away, and therefore cannot refuse or discharge the Acceptance.

Note, This Case will admit of two Protests, perhaps three.

1. One Protest must be made for not accepting according to the Time. *Bald in leg. pro debit.*
2. For that the Money, being demanded according to the Time mentioned in the Bill, was not paid. *C. de bon. actor. Jud. possiden & per Bartol. in leg. singul. Col. 7. ff. probatur.*
3. If the Money is not paid according to that Time that the Acceptor subscribed or accepted.

A Bill was drawn payable the first of *January*, the Person upon whom the Bill was drawn accepts the Bill to be paid the first of *March*, the Servant brings back the Bill: The Master perceiving this enlarged Acceptance, strikes out the first of *March*, and puts in the first of *January*, and then sends the Bill to be paid, the Acceptor then refuses: Whereupon the Person, to whom the Monies were to be paid, strikes out the first of *January*, and puts in the first of *March* again: In an Action brought on this Bill, the Question was, Whether these Alterations did not destroy the Bill? And ruled it did not. *Per L. C. J. Pemberton, inter Price & Shute, Pasch. 33 Car. 2. in B. R.*

XXIX. *A.* draws a Bill on *B.* and *B.* is in the Country; *C.* a Friend of his hearing of the Bill accepts it: The Party to whom the Money is to be paid, must make a Protest for Non-acceptance by *B.* and then he may take the Acceptance of *C.* and it shall bind *C.* to answer the Money.

If a Bill is drawn on *B.* and *B.* happens to be in the Country, and a Friend of his desires
Pinchard v. Foruke, Styles the 416.

the Party not to protest, and he will pay the same, it is good, and shall bind such Party.

London.

XXX. Merchants generally allow three Days after a Bill becomes due for the Payment; and for Non-payment within three Days Protest is made, but is not sent away till the next Post after the Time of Payment is expired.

Holland.

If *Saturday* is the third Day, no Protest is made till *Monday*.

There are two Protefts:
1. For Non-acceptance, which is called Intimation.
2. For Non-payment.

XXXI. The Use of the Protest is this, That it signifies to the Drawer, that the Party upon whom he drew his Bill was unwilling, not to be found, or insolvent, and to let him have a timely Notice of the same, and to enable the Party to recover against the Drawer; for if one draws a Bill from *France* upon a Person in *England*, who accepts and fails, or becomes insolvent at the Time of Payment, if there be not a Protest and * timely Notice sent to the Drawer there, it will be difficult to recover the Money.

* Which is looked upon to be the third Day.

In *Holland* they are not altogether so strict, yet there must be a reasonable Time of Notice; the Reason is, for perhaps if he had reasonable and timely Notice, the Drawer then might have had Effects, or other Means of his upon whom he drew, to reimburse himself the Bill, which since, for want of timely Notice, he hath remitted or lost. And the general Rule is, that though the Drawer is bound to the Deliverer till the Bill is satisfied, yet it is with this Proviso, that Protest be made in due Time, and a lawful and an ingenious Diligence used for obtaining Payment of the Monies; for it were unreasonable the Drawer should suffer through his Neglect.

There is no Danger, be the Party never so responsible, to protest immedi-

XXXII. Where

ately if the Money be not paid when it is due, i. e. the third Day; but there may, (especially beyond Seas) be great Hazard for want of protesting.

XXXII. Where a Merchant hath accepted, and before the same became due, he becomes insolvent, or at least his Credit publickly blasted, a Protest ought to go; but then there is usually a Demand made, which once coming, the Drawer is compellable to give better Security; and if a second Bill comes, if no Protest, then Drawer and Security lie at Stake.

In leg. pro. debitor in fine C. de bon. author Judi possiden.

If a Bill of Exchange be paid before it is due unto one that breaketh afterwards, he shall be compelled to pay it again unto the Deliverer of the Money, within what Time it is payable.

XXXIII. If a Merchant draws a Bill, and there is a Protest for Non-payment; if another Person hearing of the same, declare, that he for the Honour of the Drawer will pay the Contents, and thereupon subscribes, he is obliged thereby; and in this Case it has been practised, that that Party that received the Money hath put his Name on the Back-side of the Bill in Blank; but the Receipt is sometimes taken on the Protest, which together with the whole Proceeding is turned into an Act, and the same being drawn by the Notary, is remitted to the Drawer by him who gave Honour to the Bill.

Brunettie's Case. Carth. 129. 1 Lutw. 896. S. C.

XXXIV. If a Bill be accepted, and the Party dies, yet there must be a Demand made of his Executors or Administrators; and in Default or Delay of Payment, a Protest must be made: And although it may fall out, that the Monies may become due before there can be Administrators, or the Probate of the Will be

Fourteen Days allowed from the Death before Administration can be committed, unless there be a Will.

be granted ; yet that is Delay sufficient for a Protest in case of Non-payment.

But an Intimation ought to go, and that the Acceptor is willing to pay according to Order.

But on the other hand, if the Party be dead to whom the Monies are made payable, and the Monies are ready to be paid, and there is no Person that can legally give a Discharge, yet a Protest ought not to go for Non-payment : The Reason is, because there is no Person that hath any Authority either in Deed or in Law to make it, and a Notary ought not to make it ; if he does, and the Party hath received any Prejudice thereby, an Action of the Case perhaps may lie against him for his Pains : Nor does it avail, that if Security be offered to save him harmless against the Executors or Administrators, for that is an Act left to his own Discretion ; for perhaps the Security may not be liked : But whether good or bad, makes nothing as to oblige him in Law.

But if a Man is bound in a Bond to pay a Sum of Money to J. S. his Executors, Administrators, &c. and the Obligee dies intestate the Day before the Sum becomes due, yet the Bond is not forfeited if not paid at the Day, because there was nobody to whom the Obligor could pay to save his Obligation : But as *Littleton* says, *If it be to pay to J. S. generally, you must hunt him out all over the Kingdom, if you'll save the Penalty.*

XXXV. A Man not found, or being found, not met withal either at Home or the *Exchange*, is Cause sufficient for a Protest ; but in that there must be Diligence used in the finding him.

A Bill returned protested for Non-payment being once satisfied by the Drawer to the Deliverer, the Drawer is discharged, and so
is

is the Acceptor to him to whom the Monies were to be paid: But the Acceptor by virtue of his Acceptance makes him Debtor according to the Custom of Merchants to the Drawer.

A. drew a Bill of Exchange in the *West-Indies*, on *T.* in *London*, at sixty Days Sight to *W.* or Order, *W.* indorsed it to *G.* who presented the Bill to *T.* who refusing, *G.* noted it for Non-acceptance, and at the End of sixty Days protested it for Non-payment, and then wrote a Letter to *A.* and also to his Agent in the *West-Indies*, acquainting him that the Bill was not accepted. In an Action brought against *A.* by *G.* in this Case, he was nonsuited, for by not sending the Protest for Non-acceptance, he made himself liable. The use of Noting is, that it should be done the very Day of Refusal, and the Protest may be drawn any Day after, by the Notary, and be dated of the Day the Noting was made, and the sixty Days would then begin to run, as to the Bill-holder, from the Date of the Noting; and where the Bill is accepted, the sixty Days begin to run from the Acceptance, *Trials at Nisi Prius.* 256.

Sir *John Bland* gave a Bill of Exchange to *Robinson*, for 672 *l.* viz. 300 *l.* lent at the Time and Place of Play, and 372 *l.* lost. The Play was very fair, and there was not any Imputation on *Robinson's* Behaviour. He brought an Action of *Assumpsit* against Sir *John's* Representative on the Bill of Exchange, and also for Money lent. Upon a Case reserved, the Court held that he could not recover on the first Count, the Bill of Exchange being void by 9 *Ann. c. 14.* But they held as to the second Count, though no Action could be maintained for Money won at
 VOL. II. I Gaming,

Gaming, the Statute prohibiting any Recovery upon a gaming Consideration; yet as to the Money lent, the Statute only avoids the Security, and not the Contract, which when fair is good, and therefore gave Judgment for the Plaintiff for 300 l.—In the same Case it was made a Question, whether the Plaintiff should recover any, and what Interest? As to the first the Court said, that though the Security were void, yet he had agreed to pay Interest. As to the second, though the Practice had been to stop Interest at the bringing of the Action, yet they held the Plaintiff intitled to Interest to the Time of the Judgment, and said the Court ought always to give Interest to the Verdict at least. *id.* 259. 2 *Bur. Rep.* 1077.

XXXVI. Monies may be had on Exchange by way of Letters of Credit, the which are in two Respects; the first general, the other special.

The general Letter is open, directed, *To all Merchants and others that shall furnish my Servant or Factor, or any other with such and such Monies*; for Re-payment of which he binds himself to answer and pay all such Bills of Exchange as shall be drawn on him upon the Receipt of the Value, by his Servant, Factor, or other Person: If there be really Monies advanced on this Letter of Credit, and paid to the Factor, Servant, or other, and Bills of Exchange are sent to the Party that sent such Letter of Credit, and if he refuses to accept, yet according to the Custom of Merchants he is bound to pay: The Reason is, for that there was no Respect had to the Ability of the Taker-up, but to him that gave his Letters of Credit: And therefore in such Case,

Case, if an Action at Law be brought, the particular Customs as to that Point must be carefully set forth.

The special Letters of Credit, where one writes a Letter to furnish another Man's Factor or Agent; there is in this the same Remedy as above.

As Bills of Exchange seldom come without Letters of Advice, so ought they to be pursued: If a Bill shall express, *And put it to the Account of A*; and the Letter of Advice says *B*. this must be protested against, for it cannot safely be paid, at least running the Risque of an equivocal Suit.

XXXVII. If one pays Money on a Bill before it be due, and the Party breaks, it has been conceived that the Party ought to answer the Drawer: The Reason hath been, because the Drawer might have countermanded the same, or ordered the Bill to be made payable to another.

In *Italy*, if Money is paid to a Banker's Servant, and if the Master subscribe, *Pagate com si dice*, this binds the Master as effectually, as if he had subscribed it with his own Hands.

XXXVIII. A Bill drawn by a Merchant in *London* payable by another Person beyond Seas, such Bills in most Countries are assignable over from Merchant to Merchant, and the last Person may sue and recover the same upon an Acceptance: But in *England*, only the first Person mentioned in the Bill, and to whom the Money is made payable, may recover. 'Tis true, such Person to whom the Money is made payable, may for valuable Consideration deliver this Bill to another Person, and he may indorse an Order on the Back-side;

and if the Party afterwards refuses Payment of the same, it may be sued in the Party's Name to whom the same was transferred, laying the same by way of Custom.

But if the Person to whom payable, indorses it for Payment of Part to *J. S.* the Drawer is not liable to the Action of *J. S.* for a Man cannot make another liable to two Actions, where by the Contract he is liable but to one. *L. Raymond* 360, 744.

Where the Bearer receives Value for a Bill not indorsed, it is a Sale of the Bill. *Idem* 442. But if there be an Indorsement, tho' only upon Discount, the Indorser is liable. *Idem* 443, 444. And a blank Indorsement may be filled up by the Indorsee. *Ibid.* In an Action against the Indorser, not necessary to prove the Hand of the Drawer. *Ibid.*

It is essential to a Bill of Exchange to be negotiable. *10 Mod.* 294.

In an Action against the Indorser, the Plaintiff need not prove the Drawer's Hand, for if it be a forged Bill, yet the Indorser is liable. *Trials at Nisi Prius.* 258.

It is enacted by 3, 4 *An. c.* 9. That all Notes payable to any Person or Order, shall be assignable over in the same manner as Inland Bills of Exchange are or may be, and that any Person, to whom such Note is indorsed, may maintain an Action for the Money, either against the Person who signed such Note, or against any of the Persons who indorsed the same, in like manner as in Cases of Inland Bills of Exchange.

By *Stat. 2. Geo. 2. ch. 25. Sect. 1.* If any Person shall forge, or procure to be forged, or assist in forging any (*inter alia*) Bill of Exchange, Promissory Note for Payment of Money,

Money, Indorsement, or Assignment of any Bill of Exchange, or Promissory Note for Payment of Money, or any Acquittance or Receipt for Money or Goods; or shall utter or publish as true any such forged, &c. knowing the same to be forged, with an Intent to defraud any Person; every such Offender shall be guilty of Felony without Benefit of Clergy. And,

By *Stat. 7. Geo. 2. ch. 22.* If any Person shall falsely make, alter, or forge, or procure to be falsely made, &c. or assist in falsely making, &c. any Acceptance of any Bill of Exchange, or the Number or principal Sum of any accountable Receipt for any Note, Bill, &c. or any Warrant or Order for Payment of Money or Delivery of Goods; or shall utter or publish any such false Acceptance, Bill, &c. with Intent to defraud any Person; every such Offender shall suffer as a Felon without Benefit of Clergy.

XXXIX. In an Action on the Case, grounded upon the Custom of Merchants, ^{1 Keb. 592.} that whenever any such or other Person, nego- ^{636.} tiating for them with any other Merchant in *England*, have Bills directed to them, that if He, to whom such Bills are directed, refuse to accept on Sight, or to pay such Bills, then he that drew it ought: Both being by the Custom to be Merchants, the Bearer as well as the Drawer. And the Plaintiff not having shewed that the Bearer was such a Merchant or Person negotiating, it was moved to stay Judgment for that Cause; but Judgment was given for the Plaintiff, for by the Court such Merchant is referred only to him, to whom the Bill is directed, and to the Procurers of

such a Bill, and not to the Drawer, or they to whose Use the Money is to be paid.

See where an Averment is necessary of the Defendant's being a Merchant on such Action upon the Custom of Merchants, *Cr. James* 306. *Oaste vers. Taylor*, and *Cr. Gbarks* 301. *Bornaby vers. Rigalt*.

Salk. 125.

In an Action on the Case, on an Inland Bill of Exchange brought by the Indorser against the Drawer, it was objected, that there was no Averment of the Defendant's being a Merchant; but it was answered and resolved by the Court, that the drawing of the Bill was a sufficient merchandizing and negotiating to this Purpose.

C H A P. XI.

Of Monies advanced by way of Bottomry, or *Fœnus Nauticum*.

- I. *How Commerce is made equivalent to natural Community.*
- II. *Whether Money be fit only to maintain the Trade and Credit of Vice.*
- III. *Abraham chose to acquire a Property by Money.*
- IV. *Of the natural and instrumental Measure of the Value of Things.*
- V. *How Money is equal to all Things.*
- VI. *Money is for buying, and hinders not, but helps Permutation.*
- VII. *Money the Instrument of Charity and Sacrifices, as well as our Necessities.*
- VIII. *Of the Difference between Monies advanced to be used in Commerce at Land, and that which is advanced at Sea.*
- IX. *Of Monies advanced by way of Bottomry, when the Contract hath its Inception.*
- X. *Of Monies sent on Ship-board, and the Vessel is wrecked,*

wrecked, where the Lender shall bear Share of the Loss, and where not.

XI. Of Monies taken up by the Master, where the same shall oblige the Owners, and where not.

XII. The Derivation and Institution of this sort of Loan, and for what Causes.

XIII. Of the several Ways of taking up of Monies by way of Bottomry, real and feigned.

XIV. Monies so advanced, whether Gain ought to be bestowed, or otherwise left to the Will of the Lender.

XV. Of Usura Marina, how reasonable the same stands at this Day.

XVI. Of Monies advanced to a considerable Profit, called Ufufruit.

I. **MONEY** is one of those Things, which they who want, want all other Things but Words to reproach their bad Fortune. But sometimes it is the Policy, even of Rags and Poverty itself, to undervalue that which it cannot have, and to convert that which it hath (though never so mean into an Esteem; and then to lodge as much Pride in a Tub, as *Alexander* could in a Palace, tho' it could not tempt him to a Change of Condition.

*Nil habet infelix paupertas durius in se,
Quàm quod ridiculos homines facit.*

No Wonder therefore, seeing rich Men will be obstinate to hold their Advantages, that deformed Poverty, (which mixes with them in the same Frame, as a Shadow to set off their Colours the better) would have the Rich to descend to them; and that instead of setting out Monies by way of *Bottomry*, *Usury*, and the like, they would not have any such Thing as Money at all, but would have all Things reduced into a State as is before mentioned*.

* Lib. v. cap.

1. §. 1, 2, 3.

It cannot be denied, but that we all live by the natural or intrinsic Value of Things; but the way to come by them is an Instrument of Civil Value, which is Money; instead of Community, therefore, we now have Commerce: Which *Commercium* is nothing else but *Communio Mercium*; but Communion must needs be by the Means of another Thing that may bear equal Proportion on both Sides; which is Money only. But now let us hear, and, if possible, satisfy the Complaints that are made against it so impatiently.

*Ascham de
Nat. Monet.
cap. 6.*

Where there is great Luxury, there must be likewise great Industry to maintain it; and therefore the Industry of this Civil State must be greater than that which is in the simple State of Nature: But what is there here to blame, seeing Industry, no more than Plenty, is, in itself, a Sin?

II. It is the Answer of Envy or Ignorance, *Prima peregrinos obscena pecunia mores Intulit.* Money is that (say they) which maintains the Trade and Credit of Vice, if that were taken away, we should look after nothing but Necessaries which are virtuous; it makes too nice Inequalities and Distances, and is not significant enough in the best Things: For all the Money in the World is not really worth one Penny-Loaf, which is convertible into our Natures and Substances; it serves only to assure Fortune, but not Virtue; it is accepted as the Measure of all Things Natural, Moral, and Divine: For Honour is nothing but antient Riches†, and in Morals, *Virtus post nummos*; this, in Religion, breeds that Root of all Evil, Covetousness: For, in a simple State of Nature, necessary Things must needs be spent within a short Time, and the

† *Arist. Polit.*

the Return of the Sun brings a new Supply, and a Treasure greater than the *Indies*; of which One || makes this Observation, *That it || Campanella was got in Blood, sails home in a Sea of Blood, Monarch. and never rests till it be laid out in Blood.* This *Hisp.* was that which was made the Price of *Salvation*, even of the Blood of our *Blessed Saviour*, thirty Pieces for that which was worth thirty thousand Worlds; but in the Religion of the first Times, *Nullo violatus Jupiter auro*, as *Juvenal* hath it.

And if this had not been brought into the World; we should not have so much to discount for at the Day of Judgment. Why therefore should that which is condemned to the Obscurity of the Earth, and lodged so near Hell, now be made the Price of all that which is above the Earth, even *à Solo usque ad Cælum*? Or why should we be excluded from the Gifts of Nature, unless we have those of Fortune? Is it not then more reasonable, that rich Men lose this Instrument of Luxury, than the Poor should lose the necessary Means of their Subsistence? This is the Plea which is made *in forma Pauperis, & de ipsa Paupertate.*

Most certain it is, that neither the stupid Simplicity of the Woods, nor Poverty itself, are any Part of Virtue; and therefore are not reckoned Blessings, as Riches were to *Solomon*, (he who built God's first Temple, and put his Religion in Lustre) and as they likewise were to *Numa*, from whom Money was called *Nummus*; he likewise built the first Temple at *Rome*; and kindled first the Vestal Fire, *& ferocem populum dearum metu mitigavit.*

III. We know how God conversed with *Abraham*, who was the first that had Money, and

and made use of it to buy a Property: It is true, they with whom he inhabited called him a Prince; but that was no Argument to him to disown their Properties, but for the contrary, lest they should think that Dominion or a Right to Things was founded in Grace.

IV. But to come more close to the Question, and to examine the Reason and Necessity of this Measure; Money is like a Law or Government, which are all constituted by the same extreme Necessity; therefore the counterfeiting or attempting to destroy any of these by private means, is every where Treason. Now this Measure is two-fold, either Natural or Civil, or rather Natural, and the Instrument which expresses the Natural by equal Permutation: The Natural Measure is proportioned either by *Want*, or *Plenty*. In *Want* we consider whether the thing be useful or necessary; Things which are necessary are best, but of least Price; as a Loaf of Bread is more necessary, but infinitely cheaper than a Diamond. One Man hath Clothes, another Leather; those two possibly have no need of one another, and therefore there will be no Permutation betwixt them; but if one had need of another, then he who were more pressed, would come to the Price of the other: And therefore *Want* or *Plenty* is the Measure of estimating Things, and is the Bond of Society, whereby one Man shews he is or may be useful to another; and Nature hath so ordered it, that no Man is so rich who hath not some need of the Poor; and no Man is so mean and abject, but he may be some ways useful to the Rich.

Money is like
the Middle
Term of a Syl-

V. The Civil Measure, or rather Instrument whereby the Natural expresses itself, is
Money,

Money, which hath but a feigned Value, and ^{logism, of} therefore it is sometimes higher and lower in ^{which it is} esteem as Men please; which could not be, ^{said, Quæ con-} if its Value were natural, which is unalterable. ^{venient in Ter-} If I have Cloth at such a Price, and you have ^{tio convenient} Wines at the same Price, then we regarding ^{inter se.} the same Price, may make an equal Permutation; Or if I give to you so many Pieces of Gold for your Cloth at the same Price, the Sale is equal again. Whether it be an Inconvenience, that in some Countries * it is * *Poland*, and sometimes at higher Value than at another, ^{generally in} is not a Consideration of this Discourse; for ^{most of those} the Price of things themselves change more ^{Northern} than any Money doth daily. ^{Countries.}

VI. *Money* is an Invention only for the more expedite Permutation of things; but it doth not follow, that Men may not make any Permutations but by Money, even as well now as if we were in our natural State. If they who dig now in waste Hills have their Harvest of Beans well gathered in, but had need of Wine for the Stomack's sake, or of Drugs for Health's sake; if the Vintner, or Apothecary have no need of Beans, what use will they make of the natural Value of their Beans without Money? Or if need be, what would they do till their Beans are gathered? Money therefore hinders not Permutation and Commerce of natural things, but assists them; nay, it is therefore an Instrument of Instruments; for he who hath Money may buy things which he need not use, but sell, thereby to get other things afterwards for his Use. There is no Nation or People so barbarous, but have Money, or a publick Instrument of Permutation either in Metals or in Fish Bones, &c. for it imports not much of what matter it

it is, provided it be durable, not counterfeitable, and difficult to come by.

VII. Take away this fungible Instrument from the Service of our Necessities, and how shall we exercise our Charity, which is a Branch of Religion and Justice, as well as of Humanity? He who goes to Church, passeth, as it were, through two Temples, the Poor at the Porch, and the Temple itself: And the giving at the Porch is called *Sacrifice*, *Offering*, and *Gift*, as well as that at the Altar. God would be sacrificed to only in one Town of the World, *Jerusalem*: But could that have been, if *Money* and *Money-Changers* had not been allowed? How could they, who came from such remote Places, have, by any other means, brought their Oxen, Calves, Goats and Doves to the Altar? If there were nothing further to shew but that one Piece, which our Saviour himself coined miraculously in the Mouth of a Fish, it were Argument sufficient, that the Use of *Money* may be both good, just, and necessary.

Vide Chap. of Exchange,
§. 1.

VIII. Things being thus stated, and that *Money* is both good, just, and necessary, it will be demanded loudly, That admitting a reasonable Advantage may be made by way of Usury, *quo jure* is it, that an Advantage upon the same, more than what the Law allows, is taken?

Leg. 3. D. de Naut. fœn. lib. 1. cod. l. 62. D. de rei. Vindic. Loçinius, lib. 2. cap. 4. §. 2.

The Distinction is great between Monies lent to be used in Commerce at Land, and that which is advanced to Sea. In the first, the Laws of the Realm have set Marks to govern the same, whereby the avaricious Mind is limited to a reasonable Profit: The Reason of that is, because the Lender runs none, but the Borrower all the Hazard, whatever that

that *Money* brings forth. But *Money* lent to Sea, or that which is called *Pecunia * trajec-* *Leg. Fæn.*
titia, there the same is advanced on the Ha- *Naut. Leg.*
 zard of the Lender, to carry (as is supposed) *periculi cod.*
 over Sea; so that if the Ship perishes, or a *Lex Mercat.*
 Spoliation of all happens, the Lender shares ^{122.}
 in the Loss, without any Hopes of ever re-
 ceiving his *Monies*; and therefore is called
 sometimes *Ufura Marina*, as well as *Fænus*
Nauticum, the Advantage accruing to the
 Owners from their *Money*, arising not from
 the Loan, but from the Hazard which the
 Lender runs; the which is commonly reduced
 to a time certain, or one or more Voyages,
 according to their several and respective
 Agreements.

IX. If the Bonds be sealed, and the *Money*
 is advanced, if the Ship happens to miscarry
 by Storm, Fire, Enemy, or any otherwise be-
 fore the Voyage began, then the Borrower
 runs the Risk, unless it be otherwise provi-
 ded generally, as that if such a Ship shall not *Vide passim aa*
 arrive at such a Place at such a time, &c. *leg. de Fæn.*
 there the Contract hath its Inception from the *Naut. & DD.*
 Sealing; but if the Condition be, That if *leg. Naval.*
 such a Ship shall sail from *London* to *Amster-*
dam, and shall not arrive there, &c. then,
 &c. there the Contingency begins not till
 the Departure. Yet it has been conceived,
 that if the Master takes up *Money* accord-
 ingly, and buys in a lawful Lading, but will
 endeavour to defraud the Prince or State of
 their Customs, and put such Goods on Board, *Vide leg. 3.C.*
 by means whereof he has incurred a Forfeiture *de Fæn. Naut.*
 of his Ship; in such Case the Lender is not
 obliged to such Hazard.

X. If *Money* be lent on Ship-board by a
 Merchant, *super Cargo* or Passenger, and be-
 fore

Leg. Naval.
Artic. 17.

fore the Day of Payment the Ship happens to be wreckt or cast away; if there be such a Saver as will admit a Contribution, then the Party is not to have his whole Money, but is to come into the Average; But if the Time of Payment were past before the Misfortune happened, then the Lender must be repaid his whole Money free from Contribution.

Artic. 18.

And therefore by the Laws Marine, if the Borrower detains any such lent Monies beyond the Term appointed for the repaying, he shall at his Return not only pay the Profit agreed on before the Voyage, but also augment the same according to the Time that hath accrued since the Day of Payment.

Where the Bond will be forfeited by Deviation. See 2 Cha. Ca. 130. 2 Salk. 444.

Where the Ship never went out of the River, the Lender was obliged to take his Principal and Interest, because he ran no Hazard. 1 Vern. 263.

Courts of Equity will not assist Bottomry-Bonds, which carry an unreasonable Interest. Dandy and Turner, Equ. Abr. 372.

* *Testatur Vinus in Peckium ad L. L. Nautic. quem vide pag. 95. Leg. Oleron. c. 1. Leg. 4. de Naut. fœn. l. 1. c. cod. Leg. qui Romæ § Calimachus de verb.*

XI. A Master of a Ship hath no Power to take up Money by Bottomry, in Places where his Owner or Owners dwell, unless it were for so much only as his Part comes to in the said Ship: Otherwise he * and his Estate must stand liable to answer the same. (a) But when a Master is out of the Country, and where he hath no Owners, nor any Goods of theirs, nor of his own, and cannot find means to take up by Exchange or otherwise, and that for want of Money the Voyage might be retarded or overthrown, *Manies* may be taken up upon Bottomry, and all the Owners are liable thereunto; otherwise he shall bear the

Loss

the Loss, that is, the Owners are liable by their Vessel, though the Money is not so employed in Truth; and the Owners have their Remedy against him whom they put in Trust. (b) But the Persons of the Owners are no ways made liable by the Act of the Master for Monies taken up.

If Owners agree not in setting out the Ship most Voices shall carry it, and then Money may be taken up for their Part by Bottomry, or *Fœnus Nauticum*, or by Hypothecating such a Proportion of the Ship.

Many Masters of Ships having ensured or taken up Monies upon Bottomry, to greater Sums of Money than the Value of their Adventure, do wilfully cast away, burn, or otherwise destroy the Ships under their Charge, the same was made Felony, and the Person and Persons so wilfully doing or procuring the same to be done, were to suffer Death.

XII. The Signification of this *Fœnus Nauticum*, is by the Dutch called, *Bomerie*, *Bodmerie*, *Boddemerii*, (so variously pronounced) from the Keel* or Bottom of the Ship upon the Parallel, whereof the Rudder of a Ship doth govern and direct the same; *parte pro toto sumpta, ita primum appellata, cum etiam lingua Gallorum antiqua & Britannica Bado vel Bodum fundum aut profundum signet † in quem navis fundum, vel ipsam navem ejusq; usum mutuo accepta est pecunia, sed postea latius pro fœnore nautico etiam usurpari capit.* And the Money so taken up by the Master is done upon great Extremity, and that for the completing of the Voyage when they are in Distress and Want in some Foreign Parts; and indeed such taking up is indeed in the Nature of Mortgaging the Ship, for *le Neif est obligé*

obl. & ibi Gothfr. & alios. (a) Hob. 12. Mo. 918. Noy 95. Latch. 252. Salk. 34. Lex. Merc. 102, 122. (b) Salk. 35. 2 Mod. Cases 79. 16 Car. 2. cap. 6. §. 12. 11 G. 1. c. 29. §. 6.

** Job. Locin. lib. 2. c. 4. §. 1. Latche's Rep. fol. 252. Scarborough's Case. † Teste Cambdeno in Britannia, p. m. 149. Locinius, lib. 2. cap. 4. §. 1.*

al payment de ceo, &c. And in the Instrument there is a Clause, that expresses that the Ship is engaged for the Performance of the same.

Monies that are advanced are upon two Securities, the one is on the bare Ship, the other upon the Person of the Borrower, sometimes upon both: The first is where a Man takes up Monies and obliges himself, that if such a Ship shall arrive at such a Port, then to repay (perhaps) double the Sum lent; but if the Ship happens to miscarry, then nothing.

Difference between this and other Loans at Interest.

This Money is likewise called *pecunia trajectitia*, because, that upon the Lender's Danger or Adventure, it is carried beyond or over the Seas, so that if the Ship perish, or all be spoiled, the Lender does lose his whole Money lent: But on the contrary, Money lent at Interest is delivered at the Peril of the Borrower, and the Profit of this is merely the Price of the simple Loan, and is called *Usura*. But the Profit of the other is a Reward for the Danger and Adventure of the Sea, which the Lender takes upon him during the Loan, which is to be understood until the Voyage be ended.

XIII. So likewise some will take up Monies, the Condition reciting, *Whereas there is such a Ship*, naming her, *bound to Amsterdam, whereof such a Man is Master*, (whereas indeed there is no such Ship or Master in Nature) *that if that Ship shall not arrive at such a Place within twelve Months, the Money agreed on to be paid shall be paid; but if the Ship shall arrive, then nothing.* The first of these is honourable and just, according to the laudable Practice among marine Persons, and tho' the Advantage runs high, as 20, 30, nay sometimes 40 *per Cent.* without Consideration of

*Toto tit. dig.
& Cod. de*

of Time; (for the Monies are to be paid within so many Days after the Ship's safe Arrival;) yet in regard the Adventure is born by the Lender, for (if the Ship perishes, the Advancer loses,) the Laws and Practice of all Maritime Countries allow of the same. And therefore by the *Common Law*, if an Action of Debt be brought on such an Instrument, the Defendant cannot plead the *Statute of Usury*. And so it was adjudged, where one *Sharpley* had brought an Action of Debt on a Bond for Monies taken up upon *Bottomry*: The Defendant pleads the *Statute of Usury*, and shewed, that a certain Ship called the made a Voyage to fish in *Newfoundland*, (which Voyage might be performed in eight Months) and the Plaintiff delivered 50 *l.* to the Defendant to pay 60 *l.* at the Return of the Ship to *D.* and if the said Ship by Leakage or Tempest should not return from *Newfoundland* to *D.* then the Defendant should pay the principal Money; and if the Ship never returned, then nothing to be paid. Upon * Demurrer it was adjudged the same was not Usury: For if the Ship had staid at *Newfoundland* two or three Years, yet at her Return but 60 *l.* was to be paid, and if she never returned, then nothing.

*onem aliquam periculi; quod creditor contra naturam mutui in se recepit partem. Jo. Locinius, lib. 2. cap. 4. §. 1, & 2. * Trin. 6. Jac. in B. R. Ja. Cro. 208. Sharpley v. Hurrell, 1 Brownl. 2. Sayer & Cleane, 1 Levinz 54. & 1 Sid. 27. Cro. Jac. 508. 1 Keb. 711.*

The other Advance which is upon a fictitious Supposition of a Ship and Master, wherein indeed there is no such Nature, is more unconscionable, the same being the common Practice that's used amongst the *Italians*, and now on this side the Water,

VOL. II.

K

though

Naut. fœn. & Doctorum sic Hardus in tit. Cod. de Naut. fœn. n. c.

Trajectitia pecunia propter periculum creditoris quamdiu navigat navis infinitas usuras capere potest; upon which Law it was observed by Anianus, Quia maris periculo committitur in quantas convenit usuras hanc pecuniam dare creditor potest.

Verum enimvero hic proprie non versari, damnatum fœnus, sed compensati-

though the same is as to internal Right unjust, yet it is daily practised, and it was not long since adjudged † that such Contract was good; according to the *Common Law* of this Realm, and that on a special Verdict.

XIV. Most certain it is, that the greater the Danger is, if there be a real Adventure, the greater may the Profit be of the Monies advanced: And so hath the same been the Opinion of Civilians, and likewise some Divines; though some seem to be of Opinion, that any Profit or Advantage ought not to be made of Monies so lent, no more than of those that are advanced on simple Loan, and on the Peril of the Borrower. However, all or most of the trading Nations of Christendom do at this Day allow of the same, as a Matter most reasonable, on account of the Contingency or Hazard that the Lender runs; and therefore such Monies may be advanced several ways, and a Profit may arise so, that there runs a Peril on the Lender.

Vide Carolum Molinæum de usur. q. 3. n. 92. ait hoc approbans omnes Theologiant creator possit aliquid accipere ultra sortem pro susceptione periculi. But surely that must be upon a real Venture, *Cl. Salmasius, cap. 9. de modo usur. fol. 380, 183, 218. Trejeßitia pecunia propter periculum creditoris, quamdiu navigat navis, infinitas usuras capere potest.* Upon which place Anianus observes, *Quia maris periculo committitur in quantas convenierit usuras hanc pecuniam dare creditor potest. Vide Novæ. Const. 106, 110.*

Bill to be relieved against a Bottomry Bond, &c. with Condition, that if the Ship *Susannab*, bound for the *East-Indies*, shall return to *London* within 36 Months, or if the Ship does not return within 36 Months, not being taken or lost by inevitable Accident within that Time, then the Money to be paid, &c. *The Ship was detained in Port Surat in India, by Embargo by the Great Mogul, so that the Ship could not sail from Surat till after the 36 Months were elapsed, and in her return home was taken.*

ken by the French; but being after the 36 Months, the Bond was forfeited; but there being no Fault in the Master, and the Voyage delayed by inevitable Accident, (*viz.*) by Embargo by the Great Mogul, the Bill prayed to be relieved against the Penalty of the Bond. Per *Harcourt*, Ch. I cannot relieve in this Case against the express Agreement of the Parties, but if the Defendant had insured this Money upon the Ship, the Plaintiff shall have the Benefit of the Insurance, upon allowing the Defendant the Charges of the Insurance, if the Plaintiff pays the Money within three Months, Bill to be dismissed without Costs. 4 *Vin. Abr.* 281. pl. 9.

Hullhead had insured for *Hutchinson* and Plaintiffs, his Assignees, on the Ship *Eyles*, with the Company, and the Entry in the Company's Book of the Contract was in short Items, called, a Label, which was, *viz.* At and from Fort St. George to London, lost or not lost. And the Policy was soon after made out, and taken in the following Words; "That the Adventure was to commence from the Ship's departing from Fort St. George to London." And the Case was, that before the Insurance was made, the Ship was lost in the River of Bengal, whither the Ship had been sent from Fort St. George to *resit*. Bill was brought by Plaintiffs to have the Insurance-money paid, being 500 *l.* as a Loss, &c. and founded the Equity, that the Policy was not made agreeable to the Label, according to which the Risk is to commence from the Ship's coming first to Fort St. George, and then going to Bengal to *resit*, being a Thing of Necessity for performing the Voyage, was

no *Deviation*, and the Loss, being during that Time, was within the Intent of Contract for the Insuring. Lord Chancellor *Hardwicke* said, this is not proper to determine here. First Question is, as to the Agreement. 2d, As to the Breach; and doubted as to the Agreement. The Memorandum is not a printed Form as to the material Points, and the Policy must be governed by that, if not varied. The Words in the Memorandum or Label (at Fort St. George) includes the stay of the Ship there, and the Policy follows the Words, but adds this, *viz.* The beginning of the Adventure to be from the Ship's departing from Fort St. George for London, which includes the Risk whilst the Ship staid there; and this seems an Inconsistency in the Policy, first to describe the Voyage, At and from, &c. and then to exclude the Risk, At, &c. This seems a mistake in writing the Policy, and is to be rectified as in the Case of Articles and a Settlement; and decreed the words to be added in the Policy, for the Adventure to commence at and from Fort St. George. *id. ib. pl. 10. Atk. Rep. 145. pl. 258.*

In Bankrupt Cases, the Obligee in any Bottomree, or *Respondentia* Bond, and the Assured in any Policy of Insurance, made and entered into upon a valuable Consideration, *bonâ fide*, shall be admitted to Claim, and after the Loss or Contingency happened, to prove his Debt and Demand, in respect of such Bonds or Policy of Insurance, in like manner, as if the Loss or Contingency had happened before the time of issuing the Commission against the Obligor or Insurer; and shall be intitled, and shall have and receive a proportionable Part, Share and Dividend

Dividend of such Bankrupt's Estate, in Proportion to the other Creditors of such Bankrupt, in like manner, as if such Loss or Contingency had happened before such Commission issued. Stat. 19 Geo. 2. ch. 32. Sect. 2.

The Occasion of making this Clause of the Statute was, that Merchants and other Traders frequently lent Money on Bottomree, or at *Respondentia*, and in the Course of their Trade frequently caused their Ships or Vessels and the Goods and Merchandizes loaded thereon, to be insured; and that where Commissions of Bankruptcy had issued against the Obligor in such Bottomree, or *Respondentia* Bond, or the Under-writer or Assurer in such Assurance, before the Loss of the Ship or Goods, in such Bond or Policy of Insurance mentioned, had happened, it had been made a Question, whether the Obligee or Obligees in such Bond, or the Assured in such Policy of Insurance, should be let in to prove their Debts, or be admitted to have any Dividend under such Commission, which was a Disparagement to Trade, therefore the above Act was made. Preamble to above Statute.

Previous to Stat. 19 Geo. 2. the Obligor of a Bottomree Bond, becoming Bankrupt before the Return of the Ship, and the Ship not returning before the Distribution made, could have no Benefit of the Distribution under the Commission. *Green's Spirit of the Bankrupt Laws*, 141.

By Stat. 19 Geo. 2. ch. 37. Sect. 1. No Assurance shall be made by any Person, or Bodies Corporate, on any Ship belonging to his Majesty, or any of his Subjects, or on any Goods on board any such Ship, Interest or no Interest, or without further proof In-

No Assurance to be made on Ships or Effects, &c. of Subjects, Interest or no Interest.

terest than the Policy, or by way of Gaming or Wagering, or without benefit of Salvage to the Assurer, and every such Assurance shall be void.

Assurance on private Ships of War, may be made Interest or no Interest. By *Señ. 2.* Assurance on private Ships of War, fitted out by his Majesty's Subjects solely to cruize against his Enemies, may be made by or for the Owners, Interest or no Interest, free of Average, and without Benefit of Salvage to the Assurer.

Assurance on Effects from Spain or Portugal. By *Señ. 3.* Any Merchandizes or Effects from any Ports in *Europe* or *America*, in the Possession of the Crowns of *Spain* or *Portugal*, may be assured in such manner as if this Act had not been made.

Re-assurance in what Cases admitted, &c. By *Señ. 4.* It shall not be lawful to make Re-assurance, unless the Assurer be insolvent, become a Bankrupt, or die; in either of which Cases such Assurer, his Executors, Administrators or Assigns, may make Re-assurance, to the amount of the Sum before by him assured; provided it be expressed in the Policy to be a Re-assurance.

The Conditions for lending Sums on Bottomree, upon Ships bound to or from the East-Indies. By *Señ. 5.* All Money to be lent on Bottomry, or *Respondentia*, upon any Ship belonging to any of his Majesty's Subjects bound to or from the *East-Indies*, shall be lent only on the Ship, or on the Effects on board such Ship, and shall be so expressed in the Condition of the Bond; and the Benefit of Salvage shall be allowed to the Lender, his Agents or Assigns, who alone shall have a Right to make Assurance on the Money so lent; and no Borrower on Bottomry, or at *Respondentia*, shall recover more on any Assurance than the Value of his Interest on the Ship, or in the Effects on board, exclusive of the Money so borrowed; and in case it appear, that the Value

Value of his Share in the Ship, or Effects, doth not amount to the Sum he hath borrowed, he shall be responsible to the Lender for so much thereof, as he hath not laid out on the Ship or Merchandizes laden thereon, with Interest for the same, together with the Assurance, and all other Charges thereon, in the Proportion the Money not laid out bears to the whole Money lent, notwithstanding the Ship and Merchandizes be totally lost.

By *Señ. 6.* In all Actions brought by the Plaintiff to Affured upon any Policy of Assurance, the Plaintiff or his Agent shall, within fifteen Days after he is required so to do in Writing by the Defendant or his Agent, declare in Writing what Sum he hath assured in the whole, and what Sums he hath borrowed at *Respondentia*, or Bottomry, for the Voyage, or any part of the Voyage in question.

By *Señ. 7.* It shall be lawful for any Person, or Body Corporate, sued on any Policy of Assurance, to bring into Court any Sum of Money; and if any such Plaintiff refuse to accept such Sum with Costs, to be taxed in Discharge of such Action, and afterwards proceed to Trial, and the Jury assess not Damages exceeding the Sum brought into Court, such Plaintiff shall pay to such Defendant Costs to be taxed.

By *Señ. 8.* This Act shall not extend to Persons residing in any Parts in *Europe*, out of his Majesty's Dominions, for whose Account any Assurance is made before the 29th of *September*, 1746; nor extend to Persons residing in *Turkey*, or in *Asia*, *Africa*, or *America*, for whose Account any Assurance is made before the 25th of *March*, 1747.

The Rule that governs a Court of Equity in Bottomry Bonds, is the Risque of the Principal, but may be so contrived as to be construed an Evasion of the Statute, as well as any other Contract. *Atk. Rep. 341.*

XV. There is likewise a second way of advancing Monies, called *Usura Marina*, joining the advanced Monies and the Danger of the Sea together; and this is obliging sometimes upon the Borrower's Ship, Goods and Person: The Product of which by Agreement will advance sometimes 20, 30, and sometimes 40 *per Cent.* as for Instance: A private Gentleman has 1000*l.* ready Money lying by him, and he has Notice of an ingenious Merchant that has good Credit beyond Seas, and understands his Business fully, applies himself to him, and offers him a 1000*l.* to be laid out in such Commodities as the Merchant shall think convenient for that Port or Country the Borrower designs for, and that he will bear the Adventure of that Money during all that Voyage; (which he knows may be accomplished within a Year) hereupon the Contract is agreed upon, 6 *per Cent.* is accounted for the Interest, and 12 *per Cent.* for the Adventure outwards, and 12 *per Cent.* for the Goods homeward; so that upon the Return the Lender receives 30 *per Cent.* which amounts to 1300 *l.*

Usura legitima ejus qui transactionem trans mare vehendam generatur, id est, cum periculo suo remissima est.

And this cannot be *Usury* by the Laws of this Realm, for the Risque and Danger that the Lender runs.

In the East-India and some other Companies.

XV. There is also another Way, but that is both honest and honourable, called *Usufruit*, that is, a Stock in a Company or Society, which is perpetual; such a Stock or Portion may be purchased, that is, the Advan-
tag

tage or Benefit arising by the Improvement of the same.

As for instance, The *East-India* Company hath a *Stock* lodged in their Hands by divers Persons; which they in the most prudent manner, as they see fit, imploy to such Places as they judge most proper; if a Return is made, the Advantage of that is distributed to each Person that is any way intitled to that *Stock*; which Advantage is called a *Dividend*, and perhaps may afford some 20 or 30 *per Cent*. But on the other hand, if that Proportion of the Stock which goes out happens to miscarry, the Abatement is proportionable, and so the Stock may be lessened, unless that they will stay the *Dividends* to keep up the Stock; the which they may do; *For it is a Trust reposed of so many Mens Monies in their Hands, to yield them such Advantage as they shall upon a just Account set out*: So that if a Man hath 1000 *l*. Stock, he cannot take the same out of the Great Stock whereby to lessen the same, but he may transfer that *Usufruit* by that customary Way, which they have to any other Person, for a valuable Consideration in *infinitum*.

By Stat. 7 *Geo. 3. ch. 49.* No Dividend shall be made by the *East-India* Company, for any Time subsequent to 24 *June*, 1767, otherwise than in Pursuance of a Vote or Resolution passed by Way of Balloting, in a General Court summoned for that Purpose, of the Meeting, whereof seven Days Notice shall be given in Writing fixed on the Royal Exchange of *London*.

By *Stat. 2.* No General Court between 8 *May*, 1767, and the beginning of next Session of Parliament, shall declare any Increase
of

OF BOTTOMRY, &c. Book II.
of Dividend beyond the Rate of 10 *l. per Cent. per Annum.*

By *Sett.* 3. No Balloting upon any Question proposed in any General Court, relative either to the Declaration of a Dividend, - or to any other Matter, shall be begun within less than eight Hours after the Adjournment or Breaking up of the Court, in which it shall have been determined that such Question should be decided by Balloting, begun later than Noon, nor closed earlier than six in the Afternoon.

By Stat. 8 Geo. 3. c. 11. *Sett.* 1. No General Court at any Time before 1 Feb. 1769, shall declare or resolve upon any Increase of Dividend beyond the Rate of 10 *l. per Cent. per Annum.*

C H A P. XII.

Of Impositions called Great Customs,
Petty Customs, and Subsidies.

- I. Impositions, *whether they may be commanded without the Three Estates, and of Magna Charta touching the same.*
- II. Of Impositions made voluntary by Consent of Merchants, and of the Adm. of the same.
- III. Of the Confirmation of the Great Charter for free Traffick; and of the Settlement now made on his Majesty of the same.
- IV. Of the Immunities formerly of the Hansatick Towns here in England, and when determined.
- V. Of the Antiquity of Customs or Publicans as well in former Ages as at this present Time, in most Nations.
- VI. Of the Imposition called Magna Custuma.
- VII. Of that which is called Parva Custuma payable by Strangers, and the Act called commonly Charta Mercatoria.

VIII. Of

VIII. *Of Subsidy, and of what, and the Rates how set.*

IX. *Of Subsidy by Strangers on Wines.*

X. *Of Goods not rated how to pay.*

XI. *Of the Subsidy Duty for Cloths.*

I. **I**MPOSITIONS neither in the Time of War, or other the greatest Necessity or Occasion that may be (much less in the Time of Peace) neither upon Foreign nor Inland Commodities of what Nature soever, be they never so superfluous or unnecessary, neither upon Merchants, Strangers, nor Denizens, may be laid by the King's absolute Power without Assent of Parliament, be it never so short a Time.

By the Statute of *Magna Charta*, Chap. 30. *All Merchants, if they were not openly prohibited before, shall have their safe and sure Conduits, to enter and depart, to go and tarry in the Realm, as well by Land as by Water, to buy and sell without any evil Tolls, by the old and rightful Customs (except in time of War) and if they be of the Land making War against us, and be found in our Realm at the Beginning of the War, they shall be attached without Harm of Body or Goods, until it be known to us, or our Justices, how our Merchants be intreated there in the Land making War against us.* The Statute of which this is a Branch, is the most ancient Statute Law we have, won and sealed with the Blood of our Ancestors, and so revered in former Times, that it hath been twenty-nine Times solemnly confirmed in Parliament.

Customs, Subsidies, Tolls, Excises, Imposts, and other Duties upon Commodities imported or exported are due to the particular Princes or States, by the general Law of Nations, as a Matter inherent to their Prerogatives, as they are the absolute Commanders,
Pro-

Proprietors, and Maintainers of the Harbours, Havens and Ports, where the Commodities are exported or imported: And all Merchants are bound to take Notice thereof, and observe the same, according to the Feudal Laws, Constitutions and Proceedings therein used in all Countries respectively, whereby they are secured and defended in their Trade and Traffick. Or otherwise in Breach of not observing such Laws and Constitutions, they are in danger of Mulcts, Fines, Loss and Forfeitures of their Goods and Commodities. To give an exact Account of the Nature, Antiquity, several Sorts of Customs, Subsidies, Imposts, and other Duties relating to Merchants, would take up too large a Compass for this Treatise, therefore shall refer as to the Nature of them to the several Books of my Lord Coke, in his 2 *Instit.* upon the *Stat. of Magna Charta*, Cap. 30. and other Statutes and Books which are many on this Subject.

Rot. Almain. II. *Impositiones* were in some sort done *Con-*
3 Ed. 3. Rot. *sensu Mercatorum*, by *Edward* the First, and
Claus. *Edward* the Third: And again in *Henry* the
26 Ed. 1. Ex- Eighth, of which the House of *Burgundy* com-
traß. Bruxel- plained, as against the Treaty of Entercourse.
les.

King *Henry* the Third finding, that such a *Modus* of Imposition tended to the Destruction of Trade, and apparent Overthrow of Commerce, and was against the Great Charter, made Proclamation *Anno* 16, in all Ports, of *England*, that all Merchants might come *faciende rectas & debitas consuetudines, nec sibi timeant de malis tollis*, for that such Impositions had no better Name than *Maletolls*.

Dorf. Claus.
an. 16 H. n. 3.
n. 20.

The like was declared and done by *Edward* the First, in the twenty-fifth Year of his Reign,
 and

and *Edward* the Second; in the eleventh and *Rot. Claus.*
 twelfth Years of his Reign. *11 Ed. 2.*

And though the King cannot lay any Imposition on Merchant or Merchandize without Assent in Parliament, yet the King by his Prerogative may restrain them from Trading (if not from any Christian Foreign Prince) yet from any Infidel Realm, State or People, without his Royal Licence: And the Reason *Vide Lane's Report in Bates's Case, this Matter there debated.* of this is, for that by such Commerce it might give Occasion for the Relinquishment of the Catholick Faith, and an Opportunity to ad-
Edward the Third's Time, Licences were frequently granted with this Preamble, that the King having special Trust and Confidence, that the Party would not decline from his Faith, did license him, &c. In the seventh Year of King *James* this very Matter came in *Mitchelbourn and Mitchelbourn's Case, C. B. 2 Brownlow* 296. Question, upon Licence granted to a Merchant to trade to the *East-Indies*.

III. In *2 Ed. 3.* the Great Charter for free Traffick was confirmed; and about some three Years after there were Commissions granted for the raising of a new kind of Tallage, but the People complained; whereupon the Commissions were repealed, and he promised never to assess any but as in the Time of his Ancestors. *12 Ed. 3. Memb. 22. in dorf. Rot. Al-maigne.*

But this Prerogative Power of imposing inward and outward upon Commodities over and above the ancient Custom of Subsidy without a free Consent in Parliament, is now ceased and settled; and that Question, which for many Ages had been handled by the most learned of their Times, in the asserting and in the denying, will never more be remembered,

membered, the same being now established by Act of Parliament : Which being managed for some time, was afterwards farmed out, and now again managed. The like having been done by former Kings, as did *Edward*

* *Claus. Anno.* the Third, with the * New and Old Customs of
5 Ed. 3. Orig. London, for 1000 Marks monthly to be paid
17 Ed. 3. unto the Wardrobe.
Rot. 2.

Richard the Second, *Anno* 20, farmed out the Subsidy of Cloth in divers Counties.

Lane's Rep.
fol. 22.

So *Edward* the Fourth, *Henry* the Eighth, Queen *Elizabeth*, and King *James* ; the same having been used in former Ages, even in the best governed State, *Rome*, which let out Portions and Decims to the *Publicans*.

The old *Hanse Towns*, viz. *Lubeck*, *Cellen*, *Brunswick*, *Dantzick*, and the rest, had extraordinary Immunities granted unto them by our Third *Henry*, for their great Assistance, and furnishing him in his Wars and naval Expeditions with so many Ships ; and as they pretended, the King was not only to pay them for the Service of their Ships, but for the Vessels themselves in case they miscarried : The King having concluded a Peace, and they being on their Return home for *Germany*, the most considerable Part of their Fleet miscarried by Storm and Stress of Weather, for which (according to Covenant) they demanded Reperation. The good King, in lieu of that which he wanted, *Money*, granted them divers Immunities ; and amongst others, they were to pay but 1 *per Cent.* Custom, which continued till Queen *Mary's* Time ; and by the Advice of King *Philip*, she enhanced the 1 to 20 *per Cent.* the *Hans* not only complained, but clamoured aloud for Breach of their ancient Privileges, confirmed unto them
 by

by long Prescription from thirteen successive Kings of *England*, and the which they pretended to have purchased with their Money. King *Philip* undertook to accommodate the Business, but Queen *Mary* dying, and he retiring, nothing was effected. Complaints being afterwards made to Queen *Elizabeth*, she answered, *That as she would not innovate any Thing, so she would protect them still in the Immunities and Condition she found.* Hereupon their Navigation and Traffick was suspended a while, which proved very advantageous to the *English*, for they tried what they could do themselves herein; their Adventures and Returns proving successful, they took the whole Trade into their own Hands, and so divided themselves into Staples and Merchant-adventurers; the one residing constant at one Place, the other keeping their Course, and adventuring to other Towns and States abroad with Cloth and other Manufactures. This so nettled the *Hans*, that they devised all the Ways that a discontented People could, to draw upon our new *Staplers* or *Adventurers* the ill Opinion of other Nations and States: But that proving but of too small a Force to stop the Current of so strong a Trade as they had got footing into, they resorted to some other; whereupon they applied themselves to the Emperor, as being a Body incorporated to the Empire: And upon Complaint, obtained Ambassadors to the Queen to mediate the Business: But they returned still *re infelici*. Hereupon the Queen caused a Proclamation to be published, *That the Merchants of the Hans should be intreated and used as all other Strangers within her Dominions, in Point of Commerce, without any Mark of Distinction.*

This

This inflamed them more, whereupon they bent their Forces more eagerly, and in an Imperial Diet at *Ratisbone*, they procured that the *English* Merchants, who had associated themselves in Corporations, both in *Embsden* and other Places, should be adjudged *Monopolists*; whereupon there was a Comitial Edict procured against them, that they should be exterminated and banished out of all Parts of the Empire; which was done by *Suderman* a great Civilian. There was there at that time for the Queen as nimble a Man as *Suderman*, and he had the Chancellor of *Embsden* to second him, yet they could not stop the Edict, whereby our new erected Society of Adventurers were pronounced a Monopoly: Yet *Gilpin* played his Cards so well, that he prevailed the *Imperial Ban* should not be published till after the Diet; and that in the Interim his Imperial Majesty should send an Ambassador to *England*, to advertise the Queen of such Proceedings against her Merchants. But this made so little Impression on the Queen, that the *Ban* grew rather ridiculous than formidable, for the Town of *Embsden* harboured our Merchants notwithstanding, and afterwards the Town of *Stode*, but the *Hanfiatics* pursuing their Revenge, and they being not so able to protect them against the Imperial Ban, removed and settled themselves in *Hamburg*.

This Politick Princess, in Recompence of their Revenge, commanded another Proclamation to be published, ' That the *Hanfiatick*
' Merchants should be allowed to trade into
' *England* upon the same Conditions as they
' formerly did, provided the *English* Mer-
' chants might have the same Privileges to
' reside

‘ reside and trade peaceably in *Stode* or *Hamburg*, or any where else within the Precincts of the *Hans*.’ This so incensed and nettled them, that all Endeavours were made to cut off *Stode* and *Hamburg* from being Members of the *Hans*, or of the Empire: But the Design was suspended till they saw the Success of 88, King *Philip* having promised to do them some good Offices in the Concern.

But the Queen finding that the *Hans* were not contented with that Equality she had offered to make betwixt them and her own Subjects, but were using such extraordinary Means, put forth another Proclamation, ‘ That they should transport neither Corn, ‘ Victuals, Arms, Timber, Masts, Cables, ‘ Metals, or any other Materials or Men to ‘ *Spain*, or *Portugal*.’ And not long after the Queen growing more redoubted and famous by the Overthrow of King *Philip*’s Invincible Armado, (as the Pope christened it) the *Hans* began to despair of doing any good, especially they having about some 60 Sail of their Ships taken about the River *Lisbon* by her Majesty’s Frigates, that were laden with *Repas de contrabanda*. She notwithstanding had Thoughts of discharging this Fleet, by endeavouring a Reconcilement of the Difference: But she having Intelligence of an extraordinary Assembly at *Lubeck*, which had purposely met to consult of Means to be revenged of her, she thereupon made absolute Prize of those 60 Sail, only two were freed to carry home the sad Tidings of their Brethrens Misfortune. Hereupon the *Pole* sent a ranting Ambassador in the Behalf of the *Hans*, who spake of the Injuries done to the *Hans*,

in a high Tone, But the Queen herself suddenly answered him in a higher, with a Satisfaction no greater than what she had done to others of the like Quality before.

This fortunate Clashing for the 19 *per Cent*, on the Customs, has proved ever since advantageous for *England*, our Merchants have ever since beaten a peaceful and an uninterrupted Trade into *High* and *Low Germany*; and by their constant Trade in those Parts have found a way thro' the *White Sea* to *Arch-Angel* and *Mosco*. The return of all which hath since vastly increased the *Riches* and *Strength* of this Nation.

Joseph. locus de Pompeio.
l. 1. de Bello.
Jud. c. 5.
p. 720.

V. After the *Jews* became tributary to *Rome*, (which was acquired by *Pompey* three-score Years before the Birth of our Saviour) certain Officers or Commissioners were appointed by the *Romans* in all those Places where their victorious Standards had claimed a Conquest, who used to appoint such Officers or Commissioners to collect and gather up such Custom-money or Tribute as was exacted by the Senate. Those that gathered up these publick Payments were termed *Publicani*, *Publicans*, and by reason of their cruel and oppressive Exaction, they became hateful in all Nations.

Every Province has its several Society or Company of Publicans; * every Society its distinct Governor: In which respect it is that *Zachæus* is called by the Evangelists, *Princeps Publicanorum*, the chief Receiver of the Tribute, or chief Publican: And all the Provincial Governors in these several Societies had one chief Master or Superintendant residing at *Rome*, unto whom the other subordinate Governors gave up their Accounts. These Publicans were hated of all the *Roman* Provinces,

* *Sigon. de Antiq. Jur. Civ. Rom. l. 2. c. 4.*
Luke 13. 2.

vinces, but especially of the *Jews*, because though it was chiefly maintained by the *Galileans*, yet it was generally inclined unto by the *Jews*, that Tribute ought not to be paid by them. This Hatred is confirmed by the *If. Causabon*. Rabinical Proverb, *Take not a Wife out of* *Exercit. 3.37.* *that Family wherein there is a Publican, for such are all Publicans.* Yea, a faithful Publican was so rare at *Rome* itself, that one *Sabinus*, for his honest managing of that Office, in an honourable Remembrance thereof, had certain Images with this Inscription, *ΚΑΘΩΣ ΤΕΛΩΝΕΥΣΑΝΤΙ* *Sueton. in Flav. Vesp. cap. 1.* *For the Faithful, Publican.* No marvel, that in Holy Writ Publicans and Sinners go Hand in Hand.

But that most excellent Advice of my Lord *Shaftsbury* ought never to be forgot, but to be engraven in the Hearts of the Managers so well as over the Door of the *Custom-house*, viz.

Let me recommend to you so to manage the King's Justice, and the Revenues, as the King may have most Profit, and the Subject least Vexation. Raking for old Debts, the Number of Informations, Projects upon Concealments, I could not find (in the eleven Years Experience I had in this Court) ever to advantage the Crown; but such Proceedings have for the most part, delivered up the King's good Subjects into the Hands of the worst of Men, Clerk of the Court, Custom-house Officers, and Excise-men.

Vide the Earl of *Shaftsbury's* Speech to Serjeant *Thurland*, 1673.

But now the World has been so long used to them, that in all or most Nations the particular Princes or States chuse out the most sage and prudent Men for that Employment.

VI. Customs are Duties certain and perpetual, payable to the King as the Inheritance of his Crown, for Merchandizes transported from and beyond the Seas from one Realm to another. *Magna-Custuma* & *antiqua* is payable out of Native Commodities, *scilicet*, Wool, Wool-fells, and Hides, and that is certainly imposed.

And this Custom, which is called *Magna Custuma*, is due to the King of common Right for four Causes.

1. For leave to depart the Kingdom, and to carry Commodities of the Realm out of it.
2. For the Interest and Dominion which the King hath in the Sea, and the Arms thereof.
3. Because the King is the Guardian of all the Ports within the Realm, & *Custos totius Regni*.
4. For Wharfage and Protection of Merchants upon the Seas against the Enemies of the Realm, and Pyrates.

VII. The Custom which is called *Parva Custuma*, is a Custom or Duty payable by Merchant-Strangers, and begun in the Time of King *Edward* the First, when they granted him, that they would pay to him and his Heirs Three Pence in the Pound for all Merchandizes exported and imported by them, &c. And that the Charter was, and may be of great Use, I have here inserted the same, as it was faithfully transcribed out of the Roll in the *Tower*.

For Merchant Strangers, concerning Liberties granted to them.

31 *Ed. 1. num.*
44. *intus.*

THE KING, to his Archbishops, &c. sendeth Greeting. Concerning the Condition of all the Merchants of the Kingdoms, Lands, and Provinces under-written: That

That is to say, *Germany, France, Spain, Portugal, Navarre, Lombardy, Tuscany, Provence, Catalonia*; Our Dukedoms of *Aquitain, Thoulouse, Turein, Flanders, Brabant*; and all other Lands, and Foreign Places by what Name soever called, coming into Our Kingdom of *England*, and there remaining.

We being very sollicitous, out of Our special Care, that under our Dominion, a Freedom of Tranquillity, and full Security for the said Merchants may be provided for the future, so as they may the more readily apply themselves to the Service of Us, and of Our Kingdom, We graciously answering their Petitions, and ordaining more amply for securing their Condition in form following underwritten, are pleased to grant to the said Merchants for Us, and Our Heirs for ever.

Imprimis, That is to say, That all Merchants of the said Kingdoms and Lands, may come from any other Place safe and secure under Our Tuition and Protection into Our said Kingdom of *England*, and every where within our Dominion, with their Merchandizes of what sort soever, and be unmolested and quiet concerning * Murage, † Pontage, * *Repairing public Walls.* and ‖ Pavage, and that within Our said Kingdom and Dominion, they may traffick in the † *Bridges.* Cities, Boroughs, and Market-Towns, only ‖ *Pavements.* in gross, as well with Natives or Inhabitants of this Our Kingdom and Dominion aforesaid, as with Strangers, Foreign and Domestick: But so, as their Wares, vulgarly called *Mercery*, or the *SPECIES thereof*, they may sell by Retail, as formerly hath been accustomed. And that all the said Merchants may carry, or cause to be carried, whither they please, their Merchandize which they have

brought into Our said Kingdom and Dominion, or otherwise acquired, except to the Lands of the manifest and notorious Enemies of Our Kingdom, paying the Customs which shall be due, Wines only excepted, which shall not be exported out of Our said Kingdom or Dominion, after they have been imported into Our said Kingdom or Dominion, without Our Pleasure and especial Licence, by any Way or Means whatsoever.

Item, That the said Merchants may lodge in the Cities, Boroughs, and Towns aforesaid, at their own Pleasure, and there stay with their Goods, to the Content of them who entertain them.

Item, That every Contract made by the said Merchants with what Persons soever, and from what Places soever, for what kind of Merchandizes soever, shall be firm and stable, so that neither of the Merchants shall depart from, or go back from his Bargain, after a *Gods-penny* is given and received between the principal Persons contracting; and if it happen that a Contention arise on the said Contract, there shall be a Tryal, or Inquisition, according to the Usages and Customs of the Fairs, and Towns where such Contract shall be made or begun.

Item, We promise to the aforesaid Merchants, and for Us, and our Heirs, for ever grant, that we by no means whatsoever will make, nor suffer to be made, any Prize, or Arrest, or Detention by Occasion of Prize, for the future, upon their said Wares, Merchandizes, or other their Goods by Us, or by any other or others in any Case and Necessity whatsoever, against the Will of the said Merchants, without

without the Price presently paid, for which the said Merchants might sell to others Wares of the like sort for, or otherwise to satisfy them, so as they shall repute themselves contented. And that no Appraisement or Value shall be put upon the said Merchants Wares, Merchandizes, or Goods, by Us or Our Ministers.

Item, We will, that all Bailiffs, and Officers of Fairs, Cities, Boroughs, and Market Towns, shall do speedy Justice to the said Merchants, complaining to them, from Day to Day, without Delay, according to the *Merchants Law*, concerning all and every thing which by the said *Law* may be determined. And if any Defect shall happen to be found in any of Our Bailiffs or Ministers, aforesaid, whereby the said Merchants, or any of their Factors shall suffer Loss, although the Merchant recover his Losses against the Party in the whole, yet nevertheless, the Bailiff, or other Ministers, as the Fault requires, shall be punished at our Suit; and we grant the said Punishment in favour of the Merchants aforesaid, for compleating their Right.

Item, That in all kinds of Pleas, saving in the case of Crime for which the Pain of Death is liable to be inflicted, where the Merchant shall be impleaded, or he implead another, of whatsoever Condition he that is impleaded be of, whether a Foreigner or a Domesticke, in the said Fairs, Cities, or Boroughs, where there is a sufficient Plenty of Merchants of the Lands aforesaid, and Inquisition there ought to be made, half of the Inquisition shall be of the said Foreign Merchants, and the other half of honest and lawful Men, where the Plea happens to be: And if a sufficient Number of the Merchants of the said

Lands shall not be found, let those be put in the Inquisition who shall be found fit in that Place, and let the Residue be of other good and fit Men, in the Places in which that Plaint shall be.

Item, We will, ordain, and appoint, that in every Market-Town and Fair of Our said Kingdom, and elsewhere within Our Dominion, *Our Weight* is to be put in a certain Place, and before weighing thereof, the Scale to be empty in the Presence of Buyer and Seller, and the Arms thereof to be equal; and when he hath set the Scale equal, he is forthwith to take off his Hands, so that it may remain equal, and that throughout our whole Kingdom and Dominion, there be one Weight and Measure, both of them sealed with the Sign of our Standard, and that every one may have a Scale of one *Quarterom* and under, where, contrary to the Governor of the said Place, or Liberty by Us, or Our Ancestors, it was not granted, or contrary to the Custom of the Villages and Fairs hitherto observed.

Item, We will and grant, that some certain, faithful and discreet Person residing in *London*, may be appointed a *Justice* in behalf of the before-mentioned Merchants, before whom they may plead specially, and more speedily recover their Debts, if the Sheriffs and Mayors distribute not to them, Day by Day, compleat and speedy Justice, that then a Commission be granted to the aforesaid Merchants, besides this present Charter, *viz.* concerning those [*Goods*] which are to be conveyed between Merchants and Merchants, according to the *Merchants Law*.

Item, We ordain and appoint, and Our Will and Pleasure is, for Us and Our Heirs, that

that this Ordinance and Statute be firmly kept for ever, notwithstanding any Liberty whatsoever which We or our Heirs for the future shall grant; the said Merchants ought not to lose their above-written Liberties, or any of them: And for and in Consideration of their obtaining the said Liberties and free Usages, and our Prises to be remitted to them: All and singular the said Merchants for themselves, and all others on their Part, have heartily and unanimously granted to Us, that for every *Hogshead of Wine* which they shall bring in, or cause to be brought in within our Kingdom or Dominion thereof; and from whence they are obliged to pay Freight to the Mariners, to pay to Us and to our Heirs, by the Name of Custom, two Shillings over and above the antient Customs due, and accustomed to be paid in Money, within forty Days after the said Wines are put on Shore out of the Ships.

Item, For every *Sack of Wool*, which the said Merchants or others in their Names do buy, and out of this Kingdom transport, or buy to transport, shall pay forty Pence over and above the antient Custom of half a Mark, which formerly was paid. And for a Last of Hides carried out of this our Kingdom and Dominion thereof to be sold, half a Mark over and above that, which according to antient Custom was formerly paid, and likewise for three hundred Woolfels to be carried out of this Kingdom, forty Pence, besides that certain Sum, which according to antient Custom was formerly given.

Item, Two Shillings for every Scarlet, and Cloth dyed in Grain.

Item,

Item, Eighteen Pence for every Cloth, in which part of a Grain Colour is intermixed.

Item, Twelve Pence for every other Cloth without Grain.

Item, Twelve Pence for every Quintal of Wax.

And whereas some of the said Merchants deal in other Commodities, as Goods weighed with *Avoir-du-pois* Weights, and in other fine Goods, as Cloth of *Turfe*, of Silk, of *Candatis*, of Hair, and in divers other Merchandizes, in Horses also, and other Animals, Corn, and other Wares and Merchandizes of different Sorts, which cannot easily be put to a certain Rate of Custom: The said Merchants have consented to give Us and our Heirs for every twenty Shillings Estimation and Value of those Wares and Merchandizes, by whatsoever Name they be called, three Pence in the Pound, upon the Entrance of their Wares or Merchandizes into Our Kingdom and Dominion aforesaid, within twenty Days after such Wares and Merchandizes shall be brought into Our Kingdom and Dominion aforesaid, and there shall be unladen or sold. And likewise three Pence for every twenty Shillings, at the exporting of what kind soever of Wares or Merchandizes bought in Our Kingdom and Dominion aforesaid, besides the antient Customs formerly given to Us, or to others. And over and above the Value and Estimation of the said Wares and Merchandizes, for which three Pence for every twenty Shillings as aforesaid are to be paid; they are to have Credit by Letters, by them to be produced from their Principals or Partners, and if they have none, let it be determined in this Case, by the Oaths

* It is supposed
it should be
Sindonibus,
of Lawn,
Cambrick, or
other fine
Linnen.

Oaths of the said Merchants, of in their Absence, of their Servants.

Moreover, It may be lawful for the Society of the Merchants aforesaid, to sell Wool to the Fellows of the said Society, and likewise to buy the same one of another within Our Kingdom and Dominion, without Payment of Custom: Provided that the said Wool come not to such Hands whereby we may be defrauded of our Customs.

And furthermore be it known, that after the said Merchants have once in any one Place within Our Kingdom and Dominion paid Our Customs granted, as aforesaid, to Us, for their Merchandizes in form aforesaid, and thereupon they have their Warrant, they shall be free, and unmolested in all other Places within Our Kingdom and Dominion, from Payment of the said Custom for the same Commodities or Merchandizes by the said Warrant, whether such Merchandizes remain within Our Kingdom and Dominion, or are carried out, except Wines, which, without our Leave or Licence as aforesaid, are by no means to be exported out of our Kingdom.

We will also, and for Us, and our Heirs grant, that no Exaction, Prize or Loan, or any other Burden shall be imposed in any Part or Measure on the Persons of the said Merchants, their Merchandizes or Goods, contrary to the Form before expressed and granted.

Witness hereto, the Reverend Fathers, Robert Archbishop of Canterbury, Primate of all England, Walter Bishop of Coventry and Litchfield, Henry de Lacy, Earl of Lincoln, Humphrey de Bohun, Earl of Hereford and Essex, and Constable of England, Adomarus of Valentia, Galfrid of Geynvil, Hugh de le Spencer, Walter de Bello

de Bello Campo, Steward of our House, *Robert of Bures*, and others. Given by our Hand at *Westminster* the First Day of *February*.

Pro Mercatoribus Alienigenis de Libertatibus eis concessis.

REX Archiepisc. &c. Salutem. Circa bonum statum omnium Mercatorum subscriptorum, Regnorum, Terrarum, & Provinciarum, videlicet, *Alemann, Franciæ, Hispaniæ, Portugaliæ, Navarr. Lumbardiæ, Tusciæ, Provinciæ, Cataloniæ*; Ducatus nostri *Aquitann. Tholosan. Tatureini, Flandr. Brabant.* & omnium aliarum terrarum, & locorum extraneorum quocunque nomine censeantur, venientium in Regnum nostrum *Angliæ*, & ibidem conversantium.

Nos precipua cura sollicitat, qualiter sub nostro dominio tranquillitatis, & plene securitatis, immunitas eisdem Mercatoribus futuris temporibus preparetur: Ut itaque vota ipsorum reddantur ad nostra, et Regni nostri servicia promptiora; ipsorum Petitionibus favorabiliter annuentes, & pro statu eorundem plenius affecurando, in forma que sequitur ordinantes subscripta, dictis Mercatoribus pro nobis & heredibus nostris in perpetuum duximus concedenda.

Imprimis, Videlicet, quod omnes Mercatores dictorum Regnorum & Terrarum salvo & secure sub tuitione & protectione nostra in dictum Regnum nostrum *Angliæ*, & ubique infra potestatem nostram alibi veniant cum Merchandisiis suis quibuscunque, de *Muragio, Pontagio, & Pavagio, liberi & quieti*, quodque infra idem Regnum & Potestatem nostram, in Civitatibus, Burgis, & Villis Mercatoriis,

catoriis possent mercari, *duntaxat in grōsso*, tam cum Indigenis seu Incolis ejusdem Regni; & Potestatis nostræ predictæ quam cum *Alienigenis* extraneis vel privatis. Ita tamen quod, Merces que vulgariter *Merceria* vocantur ac *Species*, *minuciatim* vendi possint, prout antea fieri consuevit: Et quod omnes predicti Mercatores Merchandisas suas quas ipsos ad predictum Regnum & Potestatem nostram adducere, seu infra idem Regnum & Potestatem nostram emere, vel alias adquirere contigerit, possint quo voluerint, tam infra Regnum & Potestatem nostram predictam, quam extra ducere, seu portari facere *præterquam ad terras manifestorum & notiorum hostium Regni nostri* solvendo consuetudines quas debebunt, *Vinis duntaxat exceptis*, quæ de eodem Regno seu Potestate nostra, postquam infra idem Regnum, seu Potestatem nostram, ductæ fuerint, sine voluntate nostra & licentia speciali, non liceat eis educere quoquo modo.

Item, Quod predicti Mercatores, in Civitatibus Burgis predictis pro voluntate sua hospitari valeant, & morari Villis ac cum bonis suis, ad gratum ipsorum quorum fuerint hospitia sive domus.

Item, Quod quilibet contractus per ipsos Mercatores cum quibuscunque personis, undecunque genere super quocunque, fuerint Merchandisæ initus firmus sit & stabilis; ita quod neuter Mercatorum ab illo contractu possit discedere, vel resilire, postquam *denarius* inter principales personas contrahentes, datus fuerit & receptus. Et si forsan super contractu hujusmodi contentio oriatur, fiat inde probatio aut inquisitio secundum usus & consuetudines Feriarum, & Villarum ubi dictum Contractum fieri contigeret, & iniri.

Item,

Item, Promittimus prefatis mercatoribus pro nobis, & hæredibus nostris, in perpetuum concedentes. *Quod nullam prisam vel arrestationem, seu dilationem occasione prisæ de cetero de Mercimoniis, Merchandisiis, seu aliis bonis suis per nos, vel alium, seu alias, pro aliqua necessitate vel casu, contra voluntatem ipsorum Mercatorum aliquatenus faciemus, aut fieri patiemur; nisi statim soluta pretio pro quo ipsi Mercatores aliis hujusmodi mercimonia vendere possint, vel eis alias satisfactio ita quod reputent se contentas, Et quod super mercimonia, merchandisas, seu bona ipsorum per nos, vel ministros nostros, nulla appreciatio, aut æstimatio imponetur.*

Item, Volumus, Quod omnes Ballivi, & Ministri Feriarum, Civitatum, Burgorum & Villarum Mercatoriarum, Mercatoribus antedictis conquerentibus coram eis, *celerem justitiam facient de die in diem sine dilatione secundum LEGEM MERCATORIAM*, de universis & singulis quæ per eandem Legem poterunt terminari. Et si forte inveniaturs defectus in aliquo Ballivorum vel Ministrorum predictorum unde iidem Mercatores, vel eorum aliquis dilectus incommoda sustinuerint, vel sustinuerit, licet Mercator versus partem in principali recuperaverit dampna sua, nihilominus Ballivus, vel Minister alius versus Nos, prout delictum exigit, puniatur, & punitionem istam concedimus in favorem Mercatorum predictorum *pro eorum justitia maturandæ.*

Item, Quod in omnibus generibus placitorum, salvo casu criminis pro quo instigenda sit poena mortis, ubi Mercator implacitatus fuerit vel alium implacitaverit, cujuscunque conditionis idem implacitatus extiterit, extraneus vel privatus, in Nundinis, Civitatibus, five

sive Burgis ubi fuerit sufficiens copia Mercatorum predictarum terrarum, & inquisitio fieri debeat, *sit medietas Inquisitionis de eisdem Mercatoribus, & medietas altera de alijs probis & legalibus hominibus loci illius, ubi placitum illud esse contigerit* : Et si de Mercatoribus dictarum Terrarum numerus non inveniatur sufficiens, *penantur in Inquisitione illi qui idonei inveniuntur ibidem, et residui sint de alijs bonis hominibus & idoneis, de locis in quibus placitum illud erit.*

Item, Volumus, Ordinamus & Statuimus, Quod in qualibet Villa Mercatoria & Feria Regni nostri predicti, & alio infra Potestatem nostram, Pandus nostrum in certo loco ponatur, & ante ponderationem Statera in presentia Emptoris & Venditoris vacua videatur, & quod brachia sint equalia, & ex tunc Ponderator ponderet in equali & cum Strateram posuerit in æquali, statim amoveat manus suas ita quod remaneat in æquam, quodq; per totum Regnum & Potestatem nostram unum sit pondus & una mensura, & signo Standardi nostri signentur, & quod quilibet possit habere Stateram unius Quarteroni & infra, ubi contra Dominum loci, aut libertatem per Nos, seu Antecessores nostros concessam illud non fuerit, sive contra Villarum aut Feriarum consuetudinem hactenus observatam.

Item, Volumus & concedimus, Quod aliquis certus homo, & fidelis, & discretus London residens, assignetur Justitarius Mercatoribus memoratis, coram quo valeant specialiter placitare, & debita sua recuperare celeriter, si Vicecomites & Majores eis non facerent de die in diem celeris justitiæ complementum, & inde fiat Commissio extra chartam presentem concessa Mercatoribus antedictis, scilicet,
de

de hiis quæ sunt inter Mercatores & Mercatores, secundum *LEGEM MERCATORI-AM* decernenda.

Item, Ordinamus & Statuimus, & Ordinationem illam Statutumque *pro Nobis & Hæredibus nostris in perpetuum Volumus firmiter observari*, quod pro quacunque libertate quam Nos vel Hæredes nostri de cætero concedemus, prefati Mercatores supra-scriptas Libertates, vel earum aliquam non amittant. Pro supra-dictis autem Libertatibus & liberis Consuetudinibus obtinendis, & Præstis nostris remittendis eisdem sepedicti Mercatores universi & singuli pro se & omnibus aliis de partibus suis, Nobis concorditer & unanimiter concefferunt quod de qualibet *Dolio vini* quod adducent, vel adduci facient infra Regnum & Potestatem nostram, & *unde Marinariis fretum solvere tenebuntur*, solvent Nobis & Heredibus nostris *nomine Custumæ*, duos Solidos ultra antiquas Custumas debitas, & in Denariis solvi consuetas, nobis aut aliis infra quadraginta dies postquam extra Naves ad Terram posita fuerint dicta vina.

Item, De quolibet *Sacco Lane*, quem dicti Mercatores, aut alii nomine ipsorum ement & de Regno nostro educent, aut emi & educi facient, solvent *quadraginta Denarios* de incremento, ultra Custumam antiquam *dimidiæ Marcæ* que prius fuerat persoluta. Et pro Lasto Coriorum extra Regnum & Potestatem nostram vehendorum *dimidiam Marcam*, supra id quod ex antiqua Custuma antea solvebatur; Et similiter de trecentis pellibus Lanutis, extra Regnum & Potestatem nostram, deducendis, quadraginta denariis ultra certum illud quod de antiqua Custuma fuerat prius datum.

Item,

Item, Duos Solidos de *qualibet Scarleta*, & panno tincto in grano.

Item, Decem & octo denarios de quolibet panno in quo pars *grani fuerit intermixta*.

Item, Duodecim denarios de quolibet panno alio *sine grano*.

Item, Duodecim denarios de quolibet *Cera* quintallo.

Cumque de prefatis Mercatoribus nonnulli eorum alias exercean Merchandisas, et de aliis rebus subtilibus, sicut de pannis Tarsen, de Serico, de Cindatis, at Sera, & aliis diversis mercibus, et de equis etiam, ac aliis animalibus, Blado, et aliis rebus, et Merchandisiis multimodis, quæ ad certam Custumam facile poni non poterunt, iidem Mercatores concesserunt dare Nobis et Hæredibus nostris de qualibet libra argenti estimationis seu valoris rerum et Merchandisarum huiusmodi quocunque nomine censeantur, *tres denarios de libra* in introitu rerum, & Merchandisarum ipsarum in Regnum & Potestatem nostram predictam infra viginti dies postquam huiusmodi Res et Merchandisæ in Regnum et Potestatem nostram adductæ, et etiam ibidem exoneratæ, sive venditæ, fuerint. *Et similiter* tres denarios de qualibet libra argenti in educatione quarumcunque rerum, & Merchandisarum huiusmodi emptarum in Regno et Potestate nostra predictis, ultra Custumas antiquas nobis, aut aliis ante datas. *Et super* valore et estimatione rerum et Merchandisarum huiusmodi, de quibus tres denarii de qualibet libra argenti sicut prædicitur sunt solvendi; credatur eis per literas quas de Dominis aut sociis suis ostendere poterunt, et si literas non habeant, Stetur in hac parte ipsorum mercatorum si præsentis fuerint, vel vallettorum

suorum in eorundem mercatorum absentia iuramentis

Liceat insuper Sociis de Societate mercatorum predictorum infra Regnum et Potestatem nostram predictam, Lanas vendere aliis sociis suis, et similiter emere ab eisdem absque Custuma solvenda; ita tamen quod dictæ Lanæ ad tales manus non deveniant, quod de Custuma nobis debita defraudemur.

Et præterea est sciendum, Quod postquam sæpediti Mercatores semel in uno loco infra Regnum et Potestatem nostram Custumam nobis concessam superius, pro Merchandis suis in forma solverint suprascripta et suum habeant inde *Warrantum*, erunt liberi et quieti in omnibus aliis locis infra Regnum et Potestatem nostram predictam, de solutione Custumæ huiusmodi pro eisdem Merchandis, seu Mercimoniis per idem *Warrantum*, sive huiusmodi merchandisæ infra Regnum et Potestatem nostram remaneant, sive exterius deferantur, Exceptis vinis que de Regno & Potestate prædictis, sine voluntate et licentia nostra sicut prædictum est, nullatenus educantur.

Volumus autem, ac pro Nobis & Hæredibus nostris concedimus, Quod nulla Exactio, Prisa vel Prestatio, aut aliquod aliud onus super personas mercatorum prædictorum, merchandisas, seu bona eorundem aliquatenus imponatur, contra formam expressam superius, & concessam.

Histeſtibus venerabilibus Patribus *Roberto Cantuariensi Archiepiscopo* totius *Angliæ* Primæ, *Waltero Coventr. et Litchf. Episcopo*, *Henrie de Lacy, Comite Lincoln* *Humfrido de Bobun, Comite Hereford. & Essex.* ac Constabular. *Agst. Adomar. de Valentia, Galfrido de Geynvill,*

Geynwill, Hugone de le Spencer, Waltero de Bello Campo Senescallo Hospitii nostri, Roberto de Bures, et aliis. Dat. per manum nostram apud West. primo die Febr.

Upon an Information for not paying of Custom for Linnen Cloth, the Case was thus: The Defendants were born within the Realm, their Father being an Alien, but their Mother was born here, the Question was, whether the Defendants so born should pay Aliens Custom or not? Because the Attorney General said, that Directions were lately given in *Scaccario*, that the Issue of Aliens for the first Generation should pay Aliens Duties; but here the Defendant's Mother was *English*, and the Court gave Liberty to find it specially; but the Plaintiff would not insist upon it, because some part of the Goods were clearly forfeited, for not paying any Custom at all, or making any Offer to pay it, save only by Post-entry after Seizure, and a Month lacking three Days after the first Entry of the Quantity and Parcels at the Custom-House. And a Verdict passed for the Plaintiff for that Part only, *Hardres*. 335, 336.

If Goods are landed, and the Custom paid at one Port, and afterwards the Goods are conveyed cross the Land, or by Sea, to another Port, Customs shall not be paid for them at the second Port, and that this is not within the Stat of 3 H. 7. cap. 7. 1 Sid. 264. *Bruen. v. Roe.*

Banks had seized Cambricks and Hollands, because they were landed at *Dover* without paying Custom; and it was afterwards agreed, that the Owner should pay the Custom, and have his Goods again, and so it was done;

whereupon an Information was brought against *Banks* for the Goods on the Statute 3 H. 7. c. 7. and he pleaded not guilty, and gave in Evidence, that the Goods were entered in the Custom-House Book. But *per Curiam*, that was no Discharge to him for the Mischief; for then when Goods are forfeited, every body will redeem them by paying Custom: And therefore the Goods being once forfeited shall be the King's without Redemption, and the Officer is not discharged by delivering them over, as in *Treuer*.

Compositions
with the Farmers
for the
Forfeiture.

The Plaintiffs were Farmers of the King of his Customs, and the Defendants brought into Port a Ship with Goods and unladen, the Customs not paid: After they compounded with the King for the Forfeiture, (which the Farmers had not in their Grant) after the Farmers brought Debt against them for the Custom of twelve Pence *per* Pound. The Defendants pleaded this Matter in Bar; and upon Demurrer Judgment *pro Quer.* for this Reason, because the twelve Pence in the Pound became a Duty by bringing the Goods into the Haven, and a Chattel vested. By *Fanfield*, this Custom is due, when a Ship is brought within an Haven, with intent to unlade there, but not when they are cast overboard by Tempest. *Salter* and *Garraway* against *Malapert*. 1 *Rolls Rep.* 383.

Duty for Salt
taken as
Prize.

Salt taken from a *Spaniard* by a *Dutchman*, by Commission from *Scotland*, and brought into *Scotland*, and from thence into *England*, the Duty shall be paid for it as *Scotch* Salt: But if it had been taken by *English* Commission, and only put into *Scotland*, it should pay as *English* or Foreign Salt, within the Meaning of

3 *Keb.* 510.

of the Statutes of the 12 Car. 2. cap. 18.

Sett. 16. and 14 Car. 2. cap. 11. Sett. 38.

VIII. Subsidy is a Duty payable for Merchandizes exported and imported, granted by Act of Parliament for the Life of the King. *Sir John Davies in the Case of Customs.*
And are,

1. Aids and Subsidies payable out of Native Commodities exported and imported.

2. *Tunnage*, which is a Subsidy out of Wines of all sorts; and *Poundage*, which is a Subsidy granted out of all Commodities exported and imported, except Wines and ancient Staple Commodities, and is the twentieth Part of the Merchandise, Imposts or Duties payable for Merchandizes rated and assessed by Parliament; and then they are in the Nature of Subsidies imposed by the King's Prerogative. *Vide the Stat. 12 Car. 2. of Tunnage and Poundage.*

The Rates are generally agreed on by the Commons House of Parliament, and are expressed in a Book, commonly called the *Rates of Merchandize*; that is to say, the Subsidy of Tunnage and Poundage, and the Subsidy of Woollen Cloaths or old Drapery, and are subscribed with the Hand of the Speaker.

IX. All Merchant-Strangers, bringing in any Sort of Wines, are to pay thirty Shillings on the Tun over and above the Rates which the Natives pay, including twenty Shillings the Tun formerly paid to his Majesty by the Name of *Southampton Duties*, for all Wines of the Growth of the *Levant*; for which sort of Wines, the Stranger is also to pay to the Use of the Town of *Southampton*, for every Butt or Pipe ten Shillings. *Vide in tit. Prifage.*

Aliens are likewise to pay the ancient Duty of Butlerage, which is two Shillings per Tun.

Directions in
Tunnage.

Rule, *That all such Wines as shall be landed in any of the Out-Ports, and Custom paid, and afterwards brought to the Port of London by Certificate, shall pay so much more Custom as they paid short of the Duty due in the Port of London.*

Directions in
Poundage.

For every Tun of Beer to be exported in shipping *English* built in Money must be paid Two Shillings : And for every Tun of Beer exported in any other Shipping in Money Six Shillings.

X, If there shall happen to be brought or carried out of this Realm any Goods, liable to the Payment of Custom and Subsidy which are omitted in the Book of Rates, or are not now used to be brought in or carried out, or by reason of the great Diversity of the Value of some Goods could not be rated, in such case every Customer or Collector for the Time being, shall and may levy the said Custom and Subsidy of Poundage according to the Value and Price of such Goods, to be affirmed upon the Oath of the Merchant in the Presence of the Customer, Collector, Comptroller and Surveyor, or any two of them.

Directions for
the Payment
of the Subsidy
upon Woollen
Cloth, or old
Drapery.

XI. Every *Englishman* shall pay for every short Cloth, containing in Length not above 28 Yards, and in Weight not above 64 lb. white, or coloured, by him to be shipped and carried out of this Kingdom, Three Shillings, Four Pence, being after the Rate of Two Farthings and half a Farthing per Pound Weight.

And so after that Rate for all other sorts of Cloths of greater Length and Weight, allowing not above Twenty-eight Yards, and Sixty-four Pound to a short Cloth; that is to say, for every Pound Weight over and above Sixty-four

four Pound; two Farthings and a half Farthing: And for all other sorts of lesser Cloths to be allowed to a short Cloth; that is to say, every Stranger shall pay for every short Cloth *cont.* in Length not above 28 Yards, and in Weight not above 64 lb. white or coloured, by him to be shipped or carried out of this Kingdom, Six Shillings Eight Pence, besides the old Duty of One Shilling and Two Pence.

And so after that Rate for all other sorts of Cloths of greater Length and Weight; and for all sorts of lesser Cloths to be allowed to a short Cloth; that is to say,

Dorset and Somerset Dozens, Ridge-washed, Cardinals, Pin-whites, Straits, Statuets, Stock-bridges, Tavestock, seven of each sort shall be allowed to a short Cloth.

Tauntons, Bridgewater, and Dunstars, the fifty not exceeding 64 lb. in Weight; *Devon. Dozens* containing 12 or 13 Yards, in Weight 13 lb. five to be allowed to a short Cloth.

Ordinary *Pennystones,* or *Forest Whites,* *cont.* between 12 or 13 Yards, and in Weight 28 Pounds; *Sporting Pennystones,* *cont.* 13 or 14 Yards, and in Weight 35 Pounds unfeized, four to be allowed to a short Cloth.

Narrow *Yorkshire Kerfies Whites and Reds,* *cont.* not above 17 or 18 Yards, and in Weight 22 Pound. *Hampshire ordinary Kerfies, Newberry Whites,* and other Kerfies of like making, *cont.* 24 Yards, and in Weight 28 lb. *Sorting Hampshire Kerfies,* *cont.* 28 Pound, and in Weight 32 Pound; three of them to make a short Cloth.

Northern Dozens, single *sorting Pennystones,* *cont.* between 12 and 15 Yards, and in Weight

53 Pound frized, two of them to make a short Cloth.

And the Northern Dozens double, one to be accounted for a short Cloth.

All which shall go and be accounted for short Cloths, and shall pay after the Rate of the short Cloth before rated, and for over-weight two Farthings and One-half the Pound.

The new sort of Cloth, called the *Spanish* Cloth, otherwise Narrow Lift, Western Broad Cloth, not exceeding 25 Yards in Length, and 43 Pounds in Weight, to be accounted Two-thirds of the short Cloth before rated.

And for every Pound Weight exceeding 43 Pounds, Two Farthings and half Farthing the Pound Weight.

Cloth Rashers, *alias* Cloth Serges, *cont.* 30 Yards, weighing 40 Pounds, to be accounted Two-thirds of the short Cloth before rated.

And for every Pound exceeding 40 Pound Weight, Two Farthings and half a Farthing the Pound Weight.

And for any other sort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay Two Farthings and half a Farthing the Pound Weight: And for any other sort of Woollen Cloth of the Old or New Drapery, and not mentioned, is to pay Two Farthings and half a Farthing for the Subsidy of every Pound thereof.

By the Book of Rates annexed to the Act of Tunnage, and Poundage 5 *l.* *per Cent.* are allowed to the Merchants out of the Subsidy for Poundage, and 10 *l.* more for ready Money: And whereas 12 *d.* in the Pound is due and payable to the King for Poundage, 6 *d.* in the Pound more is given by another Act, called the Additional Duty. And whether or

not

not 5*l. per Cent.* shall be allowed out of this Additional Duty, or not, was the Question. *Per Curiam*, 5*l. per Cent.* ought to be allowed out of the Additional Duty, as well as out of the 12*d. per Pound*; for it appears in divers Places of the Book of Rates, that 6*d.* in the Pound is looked upon as part of the Subsidy of Poundage, and 5*l.* is to be allowed out of all Subsidies. The Book of Rates is incorporated into the Act of Parliament, and is part of it, so that whatever is there must be taken as comprised in the Body of the Act itself.

Papillon, v. Sir John Harrison. Har-dress 349.

Since our Author wrote, there have been several severe Statutes against running uncustomed Goods; but as it would too much enlarge this Work to give Abstracts of them here, we shall do little more than refer to those of them which are most remarkable; the rather, because the Offences cognizable by them are mostly at Land, and triable by the Course and in the Courts of the Common Law.

By Statute 5 *Geo. 1. ch. 21. §. 34, 35.* If Persons armed, tumultuously assembled, to the Number of Eight or more, forcibly hinder, beat or wound an Officer of the Customs in the due Execution of his Office, they are to be transported, not exceeding seven Years; and returning within that Time is Felony without Benefit of Clergy.

The Statute 9 *Geo. 2. ch. 35.* was a kind of general Pardon to all Offenders concerning the Customs; it enumerates many Offences, and acquits all Persons guilty of them; but under some Restrictions, *viz.* any Person receiving the Benefit of that Act, for any of the Offences which made him liable to Transportation,

tation, will be a Felon without Clergy, if he again commits any such like Offence.

And by the same Act three or more Persons armed, who assemble to assist in running, &c. uncustomed Goods, are Felons; and to be transported for seven Years; and returning within that Time is Felony, *sans* Clergy.

C H A P. XIII.

Of Impositions Subsequent, Conditional, Temporary, &c.

- I. *Of Impositions on the Manufactures of France, by Lex Talionis.*
- II. *On Vinegar, Perry, Cyder, and Rape, Customs payable by Denizens and Strangers, and Logwood made importable.*
- III. *On Ships that have not two Decks, and 16 Guns.*
- IV. *On Salt, Beer, Cyder, Perry, Vinegar, a further Duty.*
- V. *Of the Duty called Coinage, and upon what imposed; and the temporary Imposition called the additional Duty.*
- VI. *Of Goods particularly imported by Aliens; and Rules for petty Customs, and other Matters relating to Duties.*
- VII. *Of Aliens Customs on Fish and other Commodities, and Rates upon the same.*
- VIII. *Impositions on Foreign Liquors, and Rates on the same.*
- IX. *Of Native Commodities, and such as were formerly prohibited, may be transported, paying certain Duties.*
- X. *Beer, &c. Exported; Skins, Leather, &c. transportable, paying certain Duties—Bullion and Coin only excepted.*
- XI. *Of Species importable by any Nation.*
- XII. *Of great and lesser Officers Fees, and of Goods not paying one Pound Custom in or out, what Fees to be taken.*

XIII.

XIII. *Voluntary Gifts from some esteemed no Bribes ; and Rates about Payment of Fees.*

XIV. *Of Allowances for Jury, what.*

THERE are several Duties imposed subsequent to the Duties payable by the Book of Rates, and over and above the same ; that is to say, on all Ships belonging to the *French King's* Subjects, which shall lade or unlade any Goods in this Kingdom, or set on Shore or take in any Passenger, or pay 20 s. per Tun : This was in Return for the *French King's* imposing the Value of 50 *12 Car. 2.* *Sols.* on every *English* Ship ; this Complement lasted but three Weeks longer than the *French King's* ; his removed, ours drops.

II. So likewise on Vinegar, Perry, Rape, Cyder, and Cyder-eager, imported from Foreign Parts *per English*, shall answer Six Pounds Ten Shillings per Tun ; if by Strangers, then but Six Pounds. This collected as the Tunnage and Poundage is directed.

But if they shall export, then Three Pounds Ten Shillings per Tun shall be repaid to the *English*, and Four Pounds Fifteen Shillings to be repaid to Strangers. *14 Car. 2. c. 11. For prevention of Frauds.*

The Statute of *Eliz.* prohibiting the Importation of Logwood, repealed ; and the same may be imported, paying 5 l per Tun : *14 Car. 2. c. 11.* And in case of Exportation, then to be repaid 4 l per Tun.

III. The Parliament taking likewise again into consideration the Encouragement of Trading in Ships of Force, have imposed on all Goods and Merchandize, imported and exported from and to the Mediterranean Sea, beyond *Malaga*, in any Ship that hath not two Decks and Sixteen Pieces of Ordnance mounted, and two Men to each Gun, to pay over

14 Car. 2.
cap. 11.

over and above the Rates imposed by the Book of Rates one *per Cent.* This does not extend to Ships laden with Fish, or half laden with Fish and other Commodities.

IV. So likewise on Salt out of *Scotland* into *England*, One half-penny *per Gallon*.

18 Car. 2.
cap. 5.

Again, there is imposed on Wines, Vinegar, Cyder and Beer, Ten Shillings *per Tun*, and on Brandy and Strong-waters Twenty Shillings *per Tun*. For the Coinage Duty, the Monies that arise on this Duty are to be paid at the Custom-House to the Collectors and Officers, to be by them kept apart from all other Monies, and paid quarterly into the *Exchequer* without Salary or Fee: The Goods are forfeitable for Non-payment of this Duty; and the same is to be repaid, if the Goods are transported within one Year.

22 Car. 2. c. 3.

V. There was likewise an Imposition of 12 *l.* *per Tun* on *Spanish* Wines, and 8 *l.* *per Tun* on *French* Wines and Vinegar, which was but temporary, and ended the 24th of *June* 1678.

Per Act of
Nav. 12 Car.
cap. 18. *Vide*
the Statutes
and the par-
ticular Com-
modities enu-
merated there.

VI. There are also Duties payable by all Aliens for Goods imported in Aliens Ships, commonly called *Navigation Duties*.

So likewise all Goods of the Growth, Produce, or Manufacture of *Muscovia* or *Russia*, and also of *Turkey*.

Rule.

Note, That in all Cases where petty Custom inward is payable, it is to be understood of the fourth Part of the full Subsidy, according to the Rates and Value in the Book of Rates, before the 5 *l.* *per Cent.* is deducted.

Rule.

Note, Wines of all sorts imported are to pay Aliens Duties.

Vide the Table
of Strangers
Duties upon
Wines.

Note, That the Neat Subsidy of Vinegar, Perry, Rape, Cyder, and Cyder-eager, both in

in *London* and Out-Ports, is the same with ^{14 Car. 2. Vid.} the Subsidy of *French* Wines, payable in ^{Table of} *London*. ^{French Wines.}

VII. So likewise there is a further Impo- ^{Act of Navi-} tion, called Aliens Custom, for all Fish, Oil, ^{gation, 12} Blubber, Whale-bone, or Whale-fins, not ^{Car. 2. c. 18.} being caught in Vessels belonging to *English* ^{Act of Trade,} Men, are to pay double Strangers Custom. ^{15 Car. 2. c. 7.} ^{Vide Stat.}

So likewise Custom and Impost to be paid ^{and the Par-} for several sorts of salted or dried Fish, not ^{iculars enu-} imported in Ships *English* built, or belonging ^{merated.} to *England*, and not having been stified and ^{Rule.} caught in such Ships.

Upon which ACT, *Note*, That the *5 l. per Cent.* is not to be allowed of the Petty Custom.

VIII. There is likewise an Excise or Impost upon Foreign Liquors imported; that is to say, Beer or Ale *6 s. per Barrel*; Cyder or Perry the Tun, Ten Shillings; Brandy or Strong-waters perfectly made, *8 d. per Gallon*.

If any of those Goods be landed before those Duties be fully paid, and Warrant signed, and without Presence of an Officer, they are forfeited, to the Informer half.

IX. There are likewise Duties imposed on several Commodities exported, by several Acts of Parliament subsequent to the Act of Tunnage and Poundage.

Coals transported in *English* Shipping and ^{Act for Trade,} Navigation for his Majesty's Plantations, in ^{15 Car. 2.} lieu of all Custom, shall pay only for one ^{cap. 7.} Chaldron of *Newcastle* Measure *1 s. 8 d.* For one Chaldron *London* Measure *1 s.* provided good Security be given for landing the said Coals accordingly.

There

Act for Til-
lage, 22 Car.
2. cap. 3.

There are likewise several Native Commodities and Cattle, prohibited by divers Acts of Parliament, not to be transported, unless sold under such Prizes; but *non obstante* they may now be exported, paying Custom according to the Book of Rates.

20 Car. 2.
cap. 5.

X. There is likewise an Imposition on Beer, Ale, and Mum to be exported, to pay. 1 s. per Tun and no more; but this is but *pro tempore* for six Years.

20 Car. 2.
cap. 5.

So likewise Leather of all Sorts, Sheepskins, Calveskins, tanned or dressed, *non obstante* any former Law, paying for each hundred Weight, *cont.* 112 lb. Weight, one Shilling and no more: This ended on the 25th of March 1675, and both of them to the End of the next Sessions of Parliament after.

Act for Trade,
15 Car. 2.
cap. 7.

Likewise all Sorts of Foreign Coin, or Bullion of Gold or Silver, may be exported without paying any Duty or Fee for the same, Entry being first made in the Custom-house; the like for Diamonds, precious Stones, Jewels, and Pearls of all sorts.

Proclam. Car.
Regis, Dec. 20,
1662, Aug.
26, 1663.
But see 14
Car. 2. con-
cerning Cus-
toms.

XI. All Persons whatsoever may import, from any Place beyond Sea in *English* Ships, Mace, Nutmegs, Cinamon, Cloves, into *England, Wales, Jersey, Guernsey*, paying the Customs thereof; provided before the lading thereof they give Notice to the Commissioners or Farmers of the Customs, of the Quantity and Quality they intend to lade, with the Name of the Vessel in which they intend to import the same, and procure a Licence under the Hands of the said Farmers or Commissioners, or any three of them, for the importing the same.

Note, If Goods are wrecked, and the Lord seizes them, yet they ought not to pay Custom.

tom. * So held by three Justices, *contra*. * *Moor* 224.
 Chief Justice *Treby*, *Trin.* 11 *W.* 3. *Co. Pl.* Lord *Cob-*
Courtrey against *Bower*. *ham's Case.*

long since adjudged in the *Common Pleas* (on a special Verdict found at
St. Edmund's-Bury in *Suffolk*) *about Mich.* 25, or *Hill.* 25, & 26 *Car.* 2.

XII. Fees and Allowances due and payable to the Officers of his Majesty's Customs and Subsidies in the Port of *London*, and the Members and Creeks thereunto belonging; that is to say, to the Officers of the Petty Customs Outwards, Subsidy Outwards, Petty Customs Inwards, Subsidies Inwards; Great Customs; Clerks Fees Inwards and Outwards, the King's Waiters, being in number Eighteen, the Register of the King's Warrants, the Usher of the Custom-house, Gaugers of *French Vessels*, Chief Searcher, and his Majesty's five under Searchers in the Port of *London*; and the two Searchers at *Gravesend*, were all set and entered in a Table; the same was settled by the Commons House of Parliament, and signed by the Right Honourable Sir *Edward Turner*, late Lord Chief Baron of his Majesty's Court of *Exchequer*, and then Speaker to the Commons House of Parliament; at which Time the Question being put, that for all Goods, not paying one Pound Custom in or out, there shall be but half Fees taken for all Coquets, Warrants, Debentures, Transires, or Certificates, it was resolved in the Affirmative.

Virtute cujus-
dam Ordin. 2
Dom. Com.
Sabbati 17
Maij, 14-
Car. 2. Regis.

XIII. Societies or Companies trading in a joint Stock, and making but one single Entry, the Adventurers being many, the Table of Fees does not hinder, but the Officers and Waiters may receive such Gratuity as the Company voluntarily give.

All

All Goods under the Value of 5 *l.* in the Book of Rates, paying Subsidy the Sum of 5 *s.* or less, shall pass without Payment of Fees.

English Merchants that shall land out of one Ship at one Time, (although the Receipt of the Subsidy be distributed into several Offices) shall not pay any more than for a single Entry.

The Goods of Partnership to pass, as if the Propriety were in one single Person.

Fish by *English*, in *English* Shipping or Vessels Inwards or Outwards all along the Coast, to pay no Fee.

Post-entries Inward to pass without Fee under five Shillings; if above five Shillings, and under forty Shillings, then Sixpence: But if the Custom to be paid exceed 40 *s.* then full Fees.

The Merchant shall pay for all Goods opening that shall be short entered, above 10 *s.* Custom.

The Merchant shall pay for weighing of all Goods that shall be short entered, above 20 *s.* Custom.

The Merchant is not to be at any Charge, if duly entered.

Tare and Tret, the first is the Weight of the Cask, or Bale, or Covering, wherein Goods are packed; the other is a Consideration allowed in the Weight

XIV. There is likewise to be allowed to the Merchants a certain Abatement called *Tare*, for Goods and Merchandize, the which is reduced into a Table, and cannot be deviated from in any Case within the Port of *London*, without special Direction of the Commissioners or Farmers; or in their Absence, of the Consent of the General Surveyors and Surveyor of the Warehouse, or of two of them at the least, whereof the Surveyor of the Warehouse to be one; and in the Out-Ports,

not

not without the Consent and Advice of the Collector and Surveyor: Or where there is no Surveyor, by the Collector himself, giving speedy Notice to the Commissioners or Farmers of the Reason of so doing.

for emptying
and re-selling
the Goods.

C H A P. XIV.

Of Scavage, Package, Porterage, Water-Baillage, Ports, Members, Creeks, the Port of *London*, and Places lawful to lade and unlade in.

- I. Scavage, *what, where payable, and to whom.*
- II. *Who pay the same, and how regulated and governed.*
- III. *Goods omitted in the Scavage Table of Rates, how to pay.*
- IV. *Of Package, how governed, and where payable.*
- V. *Where Strangers shall pay as of old.*
- VI. *Of Packers, Water-side Porters, what Duties Strangers are to pay for shipping out their Goods.*
- VII. *Of the Duty of Water-Baillage.*
- VIII. *Of Ports, Members, and Creeks; what are meant and understood by them as in reference to Action, lawful or unlawful.*
- IX. *The several Ports, Members and Creeks in England and Wales.*
- X. *Of the Extent of the Port of London.*
- XI. *Of the several Keys, Wharfs, and other Places lawful for landing of Goods.*
- XII. *What Goods are excepted, which may be shipped or landed at other Places.*

I. **S**CAVAGE is an antient Toll or Custom exacted by Mayors, Sheriffs, &c. of Merchant-Strangers for Wares, shewed or offered to Sale within their Precincts, which is prohibited by the Statute of 19 H. 7. cap. 8.

in a Charter of King Henry the Second to *Canterbury*, it is written *Scewing*.

The City of *London* still retains the Custom, of which in an old printed Book of the Customs of *London* it is there mentioned, and how to be disposed; of which Custom, "halfen del apperteyneth to the Sheriffs, and the other halfen del to the Hostys, in whose Houses the Merchants been lodged: And it is to wet that Scavage is the Shew, by Cause that Merchants shewen unto the Sheriffs Merchandizes, of the which Customs ought to be taken ore that any there be sold, &c."

22 H. 8. c. 8. II. The *Scavage* that is taken consists of two Parts, that which is payable by Denizens, and that which is required of Aliens: And that all Persons subject to such Duties might not be imposed upon, there are Tables mentioning the particular Duties set up and approved by the Lord Chancellor, Treasurer, President, Privy-Seal, Steward, and two Justices of the *King's-Bench* or *Common-Pleas*; and by them subscribed, and any four of them at least: The which Duties are on *Goods* Inwards and Outwards.

Per Order of K. Charles I. subscribed by William Lord Bishop of London. H. Earl of Manchester, L. C. J. Brampston, and Lord Littleton. III. *Note*, All Goods mentioned in the Table of *Scavage*, and not mentioned in the Table of Rates, shall pay after the Rate of one Penny in the Pound, according as they are expressed and valued in his Majesty's Book of Rates, and all others not expressed therein, shall pay the same Rates according to the true Value.

Note, That all private Baulks, 8 Inches square and upwards, are by the 23d Article annexed to the Book of Rates reputed Timber, and valued at 3 *d.* the Foot, 50 Foot making one Load, the Value of which is

12 s. 6 d. and the Subsidy for one Load $\frac{1}{4}$ of one Penny, or one Half-penny and half one Farthing, out of which the 5 per Cent. is to be deducted.

IV. There is likewise another Duty called *Package*, the which is likewise set and rated in a Table, and the which is taken of all the several Commodities therein mentioned.

All Goods not mentioned in that *Table*, are to pay for *Package* Duties, after the Rate of one Penny in the Pound, according as they are expressed or valued in his Majesty's Books of Rates, and all others not expressed therein shall pay the same Rate according to their true Value.

For every Entry in the Packer's Book for writing Bills to each Entry Outward, as usually they have done, 12 d.

V. The Strangers are to pay the labouring Porters for making up their Goods, at their own Charge, as always they have done.

Strangers are likewise to pay the Water-side Porters belonging to the Package Office, such Fees and Duties for landing and shipping their Goods, as they usually have done within these ten Years.

VI. The Packers Water-side Porters have Tables of Duties for landing of Strangers Goods, and for the shipping out their Goods; and Goods not mentioned in the Table are to pay Portage Duties, as other Goods do of like Bulk or Condition therein expressed.

VII. There is another ancient Duty called *Water-Bailage*, which the City of London have received time out of Mind, viz. for all Goods and Merchandizes imported, as well from any Port within the Realm to the Port of London, as from any Part out of the

Realm to the same, and so like Duties (with some Variances) for all such Goods as shall be exported from the Port of *London* to any other Port within the Realm, so likewise without : Of this Duty all the Citizens and Freemen of the City are exempted ; and though the same is very ancient, * and was once but small, in Regard, within Memory, it was looked upon as an Honour for a Merchant to be a Citizen of *London*, and so consequently freed ; but now, especially since the late Wars, abundance of Persons, eminent both for Honours and Estates, being unwilling to entangle themselves in the public Affairs of the City, do refuse absolutely to accept of the Freedom of the same, since which there have been great Contests with those Traders ; and though the Coast Duties have been agreed to, yet the Foreign now arising to some considerable Value, is highly disputed. And though Charters, Acts of Parliament, Common-Councils, continued Tracts and Foot-steps of ancient Evidences and Records are yet extant, to evince and make out the most apparent Title that may be, the same nevertheless labours under the greatest Difficulty amidst the Divisions of its Proprietors.

Portus *qua* *publicus* *non* *solum* *mercibus* *exonerandis* *inseruit*, *sed* *ut* *naves* *ibi* *utrum* *receptaculum* *habeant*, & *jure* *debito* *ac* *securitate* *fruantur* *Navigantes*, *quatenus* *innocuum* *iter* & *stationem* *quærunt*. *Hinc* *Portus* & *Navalia* *privilegio* *paci* *publicæ* *gaudent*. *Arg.* 1. *Leg.* 1. §. *stationem* *D. de flum.* *cap.* 2. *Jur. Nautic.* *Scud.* c. 1. §. 1. 4 *H.* 4. 20.

Members are those Places where antiently a Custom-house hath been kept, and Officers
or

or their Deputies attending, and are lawful Places of Exportation or Importation.

Creeks are Places where commonly Officers are or have been placed by way of Prevention, not out of Duty or Right of Attendance, and are not lawful Places of Exportation or Importation, without particular Licence or Sufferance from the Port or Member under which it is placed.

IX. The several Ports and Members as now they account at the Custom-house, are, *Portus est conclusus locus quo merces exportantur, l. 59. de verb. Sign. Alias statio, quod ibi tuto navis stare possint, leg. 1. §. 13. D. de sum.*

Ports.	Members.	Creeks.
London.	— — —	Gravesend.
		Leigh.
	Malden. —	Burnham.
		West Mersey.
Ipswich. —	Colchester. —	East Mersey.
		Brickley.
		Wivenhoe.
	Harwich. —	Maintree.
	Woodbridge.	
	Aldborough.	Orford.
		Dunwick.
Yarmouth.	Southwold.	Walderswick.
	— — —	Leostoffe.
	Blackney and Cley.	
	Wells cum Burnham.	
Lynn Regis.	Wisbech.	Hitcham.
		Cross Keys.

Ports.	Members.	Creeks.
<i>Boston.</i>	— — —	<i>Spalding.</i> <i>Fosdick.</i> <i>Wainfleet.</i> <i>Numby Chapel.</i> <i>Thetlethorp.</i> <i>Salt-fleet.</i>
<i>Hull.</i>	{ <i>Grimsby</i> — <i>Gaintborp.</i> <i>Bridlington.</i> <i>Scarborough.</i>	
<i>Newcastle upon Tyne.</i>	{ <i>Whitby.</i> <i>Stockton.</i> — <i>Middleborough.</i> <i>Hartlepool.</i> <i>Sunderland.</i> <i>Shields.</i> — — —	{ <i>Seaton delaval.</i> <i>Blith nooke.</i>
<i>Berwick.</i>	— — —	<i>Aylemouth.</i> <i>Warnewater.</i> <i>Holy Island.</i> <i>East Marches,</i> containing the Coast of <i>Nor-</i> <i>thumberland,</i> bordering on <i>Scotland.</i>
<i>Carlisle.</i>	{ — — — <i>Whitehaven.</i>	{ <i>West Marches,</i> containing the Coast of <i>Cum-</i> <i>berland,</i> border- ing on <i>Scotland.</i> <i>Workington.</i> <i>Ravenglas.</i> <i>Mintthorpe.</i> <i>Chester.</i>

Ports.

Members.

Creeks.

	<i>Lancaster.</i>	{ <i>Pyle of Fowdery.</i> <i>Graunge.</i>
	<i>Poulton.</i>	{ <i>Wyrewater.</i> <i>Preston and Ribble</i> <i>Water.</i>
	<i>Liverpool.</i>	{ <i>Saunders Bridge.</i> <i>Fradsham.</i> <i>South Shore of the</i> <i>River of Mersey to</i> <i>the Red Stones.</i>
<i>Chester.</i>	— —	{ <i>Hilbre.</i> <i>Dawpod.</i> <i>Neston.</i> <i>Burtonhead.</i> <i>Bagbill.</i> <i>Mossin.</i>
	<i>Aberconway.</i>	
	<i>Bewmaris. — Amlogb.</i>	
	<i>Caernarvon. — Barmouth.</i>	
	<i>Conwy.</i>	
	<i>Holyhead.</i>	
	<i>Pulbilly.</i>	

Ports. Members. Creeks.

	<i>Aberdovy.</i>	—	<i>Aberustab.</i>
<i>Milford.</i>	<i>Cardigan.</i>	{	<i>Newport.</i>
			<i>Fiscard.</i>
	<i>Pembroke.</i>	{	<i>Haverford West.</i>
			<i>Tenby.</i>
			<i>Caermarthen.</i>
			<i>Lanelthy.</i>
			<i>North Burrys.</i>
<i>Cardiffe.</i>	<i>Swanzy.</i>	{	<i>South Burrys.</i>
			<i>Neath or Briton.</i>
			<i>Ferry.</i>
			<i>Newton.</i>
	— — —	{	<i>Aberthaw.</i>
			<i>Penrath.</i>
			<i>Newport.</i>
			<i>Chepstow.</i>
<i>Gloucester.</i>	— — —	{	<i>River Severn from</i>
			<i>Bridge-North to</i>
			<i>King-Road.</i>
<i>Bristol.</i>	— — —	{	<i>Pill.</i>
			<i>Uphills.</i>
<i>Bridgwater.</i>	—		<i>Minhead.</i>

Plymouth.

Ports. Members. Creeks.

Padstow.
St. Ives.
Pensance.
Gweeke.
Falmouth. — *St. Maures.*
Foray.
Phymouth. — *Lowe.*
Penryn.
Truro.

— — { *Saltash.*
Stonehouse.
Cousland.

Ilfracomb.
Barnstable. { *Clovelly.*
Appledore.
Biddeford.

Exeter. — { *Tincomb.*
Starcrofs.
Bear and Seaton.
Topsham.
Pouldram.
Sydmouth.
Lympson.
Exmouth.
Aylmouth.

Exeter. — { *Dartmouth.* { *Saltcomb.*
Brixham.
Torbay.
Totnes.

Poole.

Ports,	Members.	Creeks.
Poole.	{	Lyme Regis. {
		Bridport.
	{	Charmouth.
		{
Weymouth.	Lulworth.	
Southampton.	{	Swanidge.
		Wareham.
	{	Christchurch.
		Hinton.
	{	Tarmonth.
		Cowes. — {
Portsmouth. —		Emsworth.
Chichester.	{	Arundel. {
		Pagham Point.
	{	Shoreham. {
		Selfey.
	{	Brightbempston.
		{
	Lewis. — {	
	{	Pensley.
		Hastings.
	{	Rye. — {
Winchelsea.		
Lyd.		
Hyth.	Rumney.	
		Sandwich.

	{	Dover.	
		— — —	{ Rungate.
			{ Marget.
Sandwich.	{		{ Whitstable.
		Deal,	
		Faversham.	
		Milton.	
	{	Rocheſter. — Quinborough.	

Note. All the Ports and Havens in *England* are *infra Corpus Comit.* and that the Court of Admiralty cannot hold Jurisdiction of any thing done in them. *Holland's Case*, Earl of *Exeter*, 30 H. 6. And because he held Plea in the Admiralty of a thing done *infra Portum Godbalt* 260, *de Hull*, Damages were recovered against him 261. two thousand Pounds.

X. In regard that the Port of *London* is of *Ad Portus* in great Concern in relation to the Customs, *staurationem*, the Extent and Limits of the same Port is by *quia publicæ* the *Exchequer* settled; which is declared to *utilitatis gratiâ fit*, extend and be accounted, from the Promon- *subditi locicon-* tory or Point called *North-Foreland*, in the Isle *ferre operas* of *Tbanet*, and from thence *Northward* in a *debent*, lib. 7. supposed Line, to the opposite *Promontory* *publ. Portus* or Point called the *Nase*, beyond the *Gun-fleet* *intuitu flumi-* upon the Coast of *Essex*, and continued West- *nis quo ambi-* ward through the River of *Thames*, and the *tur, & vedli-* several *galis quod ex*

navium statione penditur, est publicus & bodie Regalibus accensitur, §. 2. Inst. de rer. dio. l. 4. §. D. eod. c. un. quæ sunt Regal.

several Channels, Streams and Rivers falling into it, to *London-bridge*, save the usual and known Right, Liberty and Privilege to the Ports of *Sandwich* and *Ipswich*, and either of them, and the known Members thereof, and of the Customers, Comptrollers, Searchers, and other Deputies, and within the said Ports of *Sandwich* and *Ipswich*, and the several Creeks, Harbours and Havens, to them or either of them respectively belonging within the Counties of *Kent* or *Essex*.

XI. And in regard, that when Ships did come up to the Port of *London*, there used to be very great Frauds committed by a promiscuous kind of shipping and landing of Goods and Merchandizes at several blind or unknown Wharfs and Keys, by reason of which his Majesty was often defeated of his Customs, it was provided, that a Commission might issue forth out of the *Exchequer* to ascertain all such Wharfs, Keys, or other Places, as his Majesty, by virtue of such Commission, should appoint, in pursuance of which his Majesty hath been pleased to allow to be lawful Keys, Wharfs, and other Places, for the lading or landing of Goods.

Brewer's Key.

Chester's Key.

Galley Key.

Woal Dock.

* *Custom-house Key.*

* The Stone Stairs on the West-side thereof are declared not to be a Place for Shipping or Landing of Goods.

Porter's

Porter's Key.
Bear Key.
 † *Sabb's Dock.* } † Excluding the Stairs there,
 which are declared no law-
 ful Place for Shipping or
 Landing of Goods and
 Merchandize.

Wiggon's Key.
Young's Key.
Ralph's Key.
 * *Dice Key.* } * The Stairs there declared
 unlawful for Shipping or
 Landing of Goods or
 Merchandize.

Smart's Key.
 † *Somer's Key.* } † The Stairs there declared
 no lawful Place for Ship-
 ping and Landing of Goods
 and Merchandizes.

Lyon Key.
Butolph Wharf.
Hamon's Key.
 * *Gaunt's Key.* } * The Stairs on the East de-
 clared unlawful for Ship-
 ping or Landing of any
 Goods, &c.

Cock's Key. } One other Place betwixt
Cock's Key and *Fresh*
Wharf, called Part of *Fresh*
Wharf, the Stairs are de-
 clared to be unlawful for
 Shipping or Landing of
 any Goods, &c.

Fresh Wharf.

Billinggate. } To be a common open Place
 for the landing or bring-
 ing in of Fish, Salt, Vic-
 tuals, or Fuel of all sorts,
 and all Native Materials
 for

Billingsgate.

for Building, and for Fruit
(all manner of Grocery
excepted) and for carry-
ing out of the same, and
for no other Wares or
Merchandize.

*Bridge House in
Southwark.*

Is only allowed for landing
of any kind of Corn for
the City of *London*, and
not upon any private or
particular Person's Ac-
count.

XII. It may be lawful for any Person to ship or lade into any Ship or Vessel on the River of *Thames* bound over Seas, Horses, Coals, Beer, ordinary Stones for Building: Fish taken by any of his Majesty's Subjects, Corn or Grain, the Duties being paid, and Cocquets and other lawful Warrant duly passed for the same.

So likewise Deal-boards, Balks, and all sorts of Mafts and Great Timber may be unshipt and laid on Land at any Place between *Limehouse* and *Westminster*, the Owner first paying or compounding for the Customs, and declaring at what Place they will land them before he unships them, and upon Licence had, and in the Presence of an Officer they may unlade them; otherwise they incur a Forfeiture.

C H A P.

C H A P. XV.

Provisions and Allowances made, notwithstanding the several Clauses in the Acts for the Customs.

- I. Custom to be paid for no more than is landed; and when Bulk shall be broken.
- II. Of Goods Imported and Exported, what of the Customs shall be repaid back, and by whom; and of the things requisite in the same.
- III. Of Agreement or Contracts made, or to be made, for the importing and exporting by way of Composition, ratified.
- IV. What Allowances to be made to the Exporters of Wines.
- V. Of Exporting of Spanish Wool; where the same may be done.
- VI. Of Currans Exported, what Allowances shall be made, and to whom, as well to Denizens as Foreigners.
- VII. Goods imported not finding Market after a Year; Wine exported when discharged of Custom.
- VIII. What Allowances are to be made for Leakage.
- IX. What shall be accounted Leakage.
- X. Wines proving unmerchantable, what Allowances to be made.
- XI. Tobacco's receiving Detriment or Damage in the Importation, what Allowances to be made.
- XII. Strangers paying double Subsidy, where they shall pay double Custom.
- XIII. Of Times and Places lawful to unlade, and Officers Duties then attendant to be present.
- XIV. York, Newcastle, and Hull Men were Custom free, and for what Goods.
- XV. Exeter and other Western Men, what free Subsidies shall be allowed in.
- XVI. Woollen, whether new or old, what Allowances shall be made in Custom or Subsidy.

XVII.

XVII. *Allowances of five in the Hundred for all other Goods.*

XVIII. *The Customers and other Officers Duties in reference to attend their several Duties in the Customs.*

XIX. *Of Officers their Duties, and the Punishment where made on Complaint.*

XX. *The several Duties of London, how preserved.*

XXI. *The like for other Cities for those Duties granted or taken for publick good Uses.*

XXII. *Where Ships may be visited, and the Officers Duty relating to the same.*

XXIII. *Timber to be rated, and in what manner must pay.*

XXIV. *Prevention in Extortion of Customers and Officers, and on what Pains and Penalties.*

XXV. *Where Fees for Cocquets and Certificates shall be paid all together, and where he shall detain his own Cocquet till the Vessel has broke Ground.*

XXVI. *Where the Officers and Customers shall allow and make good to the Merchants the Alger Duty and all other Allowances, and no other Imposition or Duty required by the Book of Rates, shall be required to be paid.*

XXVII. *If Goods shall happen to be taken by Enemies or Pyrates, or wrecked, and what Allowances shall be paid.*

XXVIII. *Ships of War and other privileged Vessels subject to search.*

XXIX. *Of Allowances to be made, and of Shipping out lesser Quantities than are contained in the Certificate, what Operation the same hath.*

*Vide Cap. 14.
Whatarelaw-
ful Places of
landing.*

EVERY Merchant shall have free Liberty to break Bulk in any Port allowed by Law, and to pay Custom and Subsidy for no more than he shall enter and land; provided that the Master or Purser of every such Ship shall first make Declaration, upon Oath, before any two principal Officers of the Port of the true Contents of his Ship's lading, and shall likewise after declare upon his Oath, before

fore the *Customer, Collector, Comptroller, Surveyor*, or any two of them, at the next Port of this Kingdom, where his Ship shall arrive, the Quantity and Quality of the Goods landed, at the other Port where Bulk was first broken, and to whom they did belong.

A Merchant brought eighty Tun of Bay-Salt by Sea to a Port in *England*, and out of that Ship sold twenty Tun, and discharged the same into another Ship then riding at the same Port, but the twenty Tun were never actually put on Shore, and for the rest, being sixty Tuns, the Master agreed for the *Customs*, and put them on Land; and although that that twenty Tun was always Water-born, and Cok. 12. part
Feb. 17, 181 never were put on Shore, yet adjudged they ought to pay; the Reason was, for the discharging them out of the Ship amounts as much as to the laying them on Land, the same being done in Port; for otherwise Plowden &
Fogassa's
Case. the King would merely be defrauded. But if a Ship is carried in by Storm, and to preserve the Vessel part is landed before the Duty paid, yet this will not subject the same to a Forfeiture.

II. All Foreign Goods and Merchandizes (except Wines, Currans, and wrought Silks) first imported, shall be again exported by any *English* Merchant within twelve Months, and such Merchant or Merchants as shall export any such Foreign Goods or Merchandizes (except as before is excepted) shall have Allowance, and be repaid by the Officer which received the same, the one Moiety of the Subsidy which was paid at the first Importation of such Goods or Merchandizes, or any Part thereof, so as due Proof be first made by Certificate from the Officers of the due

Entry, and Payment of the Custom and Subsidy of all such Foreign Goods and Merchandizes inwards, with the Oath of the Merchants importing the same, affirming the Truth thereof, and the Name of his Majesty's Searchers, or Under-searcher in the Port of *London*, and of the Searcher of any other the Out-Ports, testifying the shipping thereof to be exported; after all which duly performed in manner before expressed, the Moiety of the Subsidy first paid inwards, shall without any Delay or Reward be repaid unto such Merchant or Merchants who do export such Goods and Merchandizes, within one Month after Demand thereof, as also the whole additional Duty of *Silk, Linen and Tobacco*, as before is directed.

Lutw. 215.

221.

14 *H.* 7.

If the Officer shall refuse to pay, (admitting there was no Relief had by way of Complaint) whether the Merchant Exporter may not bring an Action against him upon the Debt created in Law, as he that hath a Tally may do *.

* *Hobart* 270.

RollsAbridg.

599.

III. And if there be any Agreement now in force, which was formerly made by the late Commissioners of the Customs and Subsidies, with the Merchants Strangers or their Factors, or shall hereafter be made by any Commissioners or Farmers of the Customs and Subsidies, or any other Power, (except by Consent of Parliament) with any Merchant or Merchants Strangers or Factors for any Foreign Goods and Merchandizes, to be brought into the Port of *London*, or any other Port or Haven of this Kingdom of *England*, or Principality of *Wales*, and to be exported again by way of Composition; all other Merchants, being his Majesty's Subjects, shall be admitted

admitted into the same Composition, and not be excluded from any other Privilege whatsoever granted to the Stranger by any private Agreement or Composition, under the same Condition, and with the same Restriction, as shall be made with the Merchant Stranger.

IV. Every Merchant, as well *English* as Strangers, that shall ship and export any kind of Wines, which formerly have paid all the Duties of Tunnage inwards, shall have paid and allowed unto them all the Duties of Tunnage paid inward, except to the *Englishmen* 20 s. per Tun, and the Stranger 25 s. per Tun; upon due Proof of the due Entry and Payment of Tunnage inwards, and of the Shipping thereof to be exported to be made as above.

V. If any Merchant, Denizen or Stranger, ^{12 Car. 2.} shall export any *Spanish* or Foreign *Wool*, he ^{c. 32.} shall have Liberty so to do, with this further ^{14 Car. 2.} Condition, that such *Spanish*, or other Foreign ^{c. 18.} *Wools* whatsoever, be not exported in any other Ship or Vessel whatsoever, with intent to be arrived beyond the Seas out of the Kingdom of *England* and Dominion of *Wales*, than only in *English* Shipping, upon Pain of Confiscation.

VI. Every Merchant, as well *English* as Stranger, which shall ship or export any Currans which formerly were duly entered, and paid the Subsidy and Custom inwards, shall have allowed and repaid unto them respectively all the Custom and Subsidy paid inwards for the same, except 1 s. 6 d. for every hundred Weight to the *English*, and 1 s. 8 d. and one Halfpenny for every hundred Weight to the Stranger, upon due Proof of the due Entry and Payment of the Custom and Sub-

sidy thereof inwards, and of the shipping thereof to be exported, to be made as in the second Article.

VII. If any Merchant having duly paid all Duties inwards for Foreign Goods, and in regard of bad Sale shall be enforced to keep the same, or any Part thereof in his Hands, after the Space of a Year shall be elapsed; in this case he or any other Person is to be permitted to ship the same out for Parts beyond the Seas if they think fit, without Payment for any Subsidy for the same outwards, upon due Proof that the same was duly entered, and Subsidy paid inward.

VIII. Every Merchant bringing in any Sort of Wines into this Kingdom by way of Merchandize, and shall make due Entries of the same in the Custom-house, shall be allowed 12 *per Cent.* for Leakage.

IX. Every Hoghead of Wine which shall be run out, and not full seven Inches, shall be accounted for outs, and the Merchant to pay no Subsidy for the same.

*Boyce vers.
Cole sen. &
Cole jun.
Hill. 27 Car.
2. in B. R.*

And by some its conceived, that no Freight shall be paid for the same, but the Merchant may sling them up to the Master for Freight; but that should seem hard, for *non constat* any Fault in the Master, but the same may be in the Casks, or in the ill stowing (the Master by Custom having no Charge of the Stowing of Wines, especially *French*, but the same belongs to certain Officers beyond Seas, from whence they are imported) besides the *Goods*, be they empty or full, take up Tunnage in his Ship; and should all the Wines on ship-board have the same Misfortune, it would seem hard; however, it is pity Opinion in this Case should amount to a laudable Custom.

X. It

X. If any Wines shall prove corrupt and unmerchantable, and fit for nothing but to distil into hot Waters, or to make Vinegar, then every Owner of such Wines shall be abated in the Subsidy, according to such his Damages in those Wines, by the Discretion of the Collectors of the Customs, and one of the principal Officers.

XI. If any *Tobacco* or other *Goods* or *Merchandise* brought into this Kingdom shall receive any Damage by salt Water or otherwise, so that the Owner thereof shall be prejudiced in the Sale of such Goods, the principal Officers of the Custom-house, or any two of them, whereof the Collector for the Time being to be one, shall have Power to chuse two indifferent Merchants experienced in the Values of such Goods, who, upon visiting of such Goods, shall certify and declare upon their Corporal Oaths first administered by the said Officers, what Damage such Goods have received, and are lessened in their true Value; and according to such Damage in relation to the Rates set on them in the Book of Values, the Officers are to make a proportionable Abatement unto the Merchant or Owner of the Subsidy due for the same.

There is a Book at the Custom-house, in which there is a general Value set on all Goods; among which Tobacco is there valued.

By an Act 12 *Ann. c. 8. §. 8.* There is to be no Allowance for damaged Tobacco; but the Merchant refusing to pay the Duties, such Tobacco is to be burnt.

XII. All Merchants Strangers, who according to the Rates and Values set in the general Book of Values and Rates, and do pay double Subsidy for Lead, Tin, Woollen Cloth, shall also pay double Custom for Native Manufactures of *Wool*; and the said Strangers are to pay for all other Goods, as

Nor can such Merchants Strangers land their Goods before they have agreed for the Customs, notwithstanding.

Charta Mercatoria.

well inwards as outwards, rated to pay the Subsidy of Poundage, three Pence in the Pound, or any other Duty payable by *Charta Mercatoria*, besides the Subsidy.

XIII. That the Merchants trading into the Port of *London*, have free Liberty to lade and unlade their Goods at any lawful Keys and Places of shipping and lading Goods between the *Tower of London* and *London-Bridge*, and between Sun-rising and Sun-setting, from the tenth Day of *September* to the tenth Day of *March*; and between the Hour of six of the Clock in the Morning, and six of the Clock in the Evening, from the tenth Day of *March* to the tenth of *September*, giving Notice thereof to the respective Officers appointed to attend the lading and unlading of Goods; and such Officer as shall refuse upon due calling to be present, he shall forfeit for every Default 5*l.* the one Moiety to the King, the other to the Party aggrieved, he suing for the same.

XIV. The Merchants of *York*, *Kingston upon Hull*, and *Newcastle upon Tyne*, and the Members thereof, shall be allowed free of Custom and Subsidy two of the Northern Cloths and Kerseys in ten to be shipped in those Ports in the Name of *Double Wrappers*, as formerly has been there allowed them.

XV. The Merchants of *Exeter*, and other Western Parts, shall be allowed free of Subsidies one *Perpetana* in Ten for a *Wrapper*, and three *Devons Dozens* in twenty for *Wrappers*, the same to be shipped out of the Ports of *Exeter*, *Plymouth*, *Dartmouth*, *Barnstable*, *Lyme Regis*, or the Members thereof.

Note, That all these several Allowances

XVI. All Merchants transporting any Sort of *Woollen*, whether new or old Drapery, as
also

also all *Bayes* and *Cottons*, shall be allowed one in ten for a Wrapper, free of Custom and Subsidy.

XVII. Every Merchant shall be allowed upon all other Goods and Merchandize appointed to pay to any the Subsidy of Poundage, according to the Rate in the Book of Values, to be imported five in the hundred of all the said Subsidies of Poundage so appointed to be paid.

XVIII. The Officers who sit above in the Custom-house of the Port of *London*, shall attend the Service of their several Places from Nine to Twelve in the Forenoon, and one Officer, or one able Clerk, shall attend with the Book in the Afternoon, during such Time as the Officers are appointed to wait at the Water-side, for the better deciding of all Controversies that may happen concerning Merchants Warrants, all other the Officers of the Out-Ports shall attend every Day in the Custom-house of every respective Port for Dispatch of Merchants and Ships, between the Hours of Nine and Twelve, and Two and Four in the Afternoon.

XIX. Every Merchant, making an Entry of Goods either inwards or outwards, shall be dispatched in such Order as he cometh; and if any Officer or his Clerk, shall, either for Favour or Reward, put any Merchant or his Servant duly attending and making his Entries as aforesaid, to draw any other Reward or Gratuity from him than is limited in the Act of *Tunnage* and *Poundage*, and the general Book of Values, if the Master Officer be found faulty herein, he shall, upon Complaint to the chief Officers of the Custom-house, be strictly admonished of his Duty;

are not by Act of Parliament, but purely his Majesty's gracious and voluntary Gift and Benignity towards the encouraging the Merchants and Trade.

but if the Clerk be found faulty therein, he shall upon Complaint to the said chief Officers be presently discharged of his Service, and not permitted to sit any more in the Custom-house.

XX. The Lord Mayor, Commonalty, and Citizens of the City of *London*, their Officers, or Deputies for and touching Offices of *Package, Scavage, Baleage or Portage* of any Goods or Merchandize of Aliens, or their Sons born within this Kingdom, or Unfreemen, imported or exported into or out of the City of *London*, or the Liberties or Ports thereof, unto or from the Parts beyond the Seas, for or concerning the receiving or taking of any Fee or Rates heretofore usually taken, for or in respect of the said Offices, or any of them, might and may receive and take the same; any Thing in the Act of Tunnage and Poundage, or any other Act to the contrary notwithstanding.

XXI. All ancient Duties heretofore lawfully taken by any City or Town Corporate, their Farmers, Deputies or Officers, under the Name of Town-Custom, or the like, for the Maintenance of Bridges, Keys, Harbours, Wharfs, or the like, shall and may be received and enjoyed as formerly; any Thing in the said Act, or any other Act to the contrary in any wise *non obstante*.

XXII. The Under-Searcher, or other Officers of *Gravesend*, have Power to visit and search any Ship outward bound, but shall not, without just and reasonable Cause, detain any Ship under Colour of searching the Goods therein laden, above three Tides after her Arrival at *Gravesend*, under Pain of Loss of their Office, and rendering Damage to the Merchant

Merchant and Owner of the Ship; and the Searcher or Officer of the Custom-house in any of the Out-Ports, having Power to search and visit any Ship outward bound, shall not without just and reasonable Cause detain such Ship, under Colour of searching the Goods therein laden, above one Tide after the said Ship is fully laden and ready to set sail, under Pain of Loss of the Office of such Offender, and rendering Damage to the Merchant and Owner of the Ship.

XXIII. All Timber in Balks, which shall be of eight Inches square and upwards, that shall be imported or brought from any Part beyond the Seas into the Realm of *England*, Dominion of *Wales*, Port and Town of *Berwick*, or any of them, shall be rated according to the Measure of Timber, the Foot square 3*d.* for the Value thereof, and according to that Rate shall pay for Subsidy 12*d.* in the Pound according to Poundage; and all under eight Inches square, and above five Inches square, shall pay for Subsidy, according to the Rates mentioned in the Book of Rates for middle Balks, and all of five Inches square, or under, shall pay according to the Rate of small Balks.

XXIV. For avoiding of all Oppressions by any the Officers of the Customs in any Port of this Kingdom, in exacting unreasonable Fees from the Merchant, by reason of any Entries, or otherwise touching the shipping or unshipping of any Goods, Wares, or Merchandize, it is ordered that no Officer, Clerk, or other, belonging to any Custom-house whatsoever, shall exact, require, or receive any other or greater Fees of any Merchant or other whatsoever, than such as are or shall
be

be established by the Commons in Parliament assembled: And if any Officer or other offend contrary to this Order, he shall forfeit his Office and Place, and be for ever incapable of any Office in the Custom-house.

XXV. All Fees appointed to be paid unto the *Customer*, *Comptroller*, *Surveyor*, or *Surveyor General* in the Port of *London*, for any Cocquets or Certificate outwards, shall be paid altogether in one Sum, to that Officer from whom the Merchant is to have his Cocquet or Certificate above in the Custom-house; and after the Merchant hath duly paid his Custom and Subsidy, and other Duties above in the Custom-house, as is appointed above by the Book of Rates, he is to be Master of and keep his own Cocquet or Certificate, until he shall ship out his Goods so entered, when as he is to deliver the same to the *Head Searcher*, or his Majesty's *Under Searcher* in the Port of *London* or other *Ports*, together with the Mark and Number of his Goods.

XXVI. The *Officers* of the Custom-house for the Time being, shall allow and make unto all Persons all such Monies, as are or shall be due unto them for the half Subsidy, and also the *Algier* Duty of Foreign Goods formerly exported now due and unpaid.

The Duties and Sums of Money appointed to be paid by the Act of Tunnage and Poundage passed this Parliament, and by the Book of Rates therein mentioned, and no other, shall be paid to his Majesty's *Officers* during the Continuance of the said Act upon Goods imported and exported, any Law, Statute or Usage to the contrary notwithstanding. Nevertheless the Duty of *Prizage* and *Butlerage*, and the Duty of 12 *d.* of every Chaldron of Sea

Sea-coal exported from *Newcastle upon Tyne*, to any other Port or Ports of this Realm shall be continued.

XXVII. If any Merchant Denizen born shall happen to have his Goods and Merchandize taken by Enemies or Pyrates at Sea, or perished in any Ship or Ships, the Duties being either paid or agreed for, upon due Proof thereof, may ship out of the same Port the like Quantity as shall amount unto the Custom, without paying of any thing for the same. ^{27 Ed. 3. cap. 13. 12 Car. 2. cap. 4.}

If the Importer shall pay ready Money, he shall be allowed 10 per Cent. for so much as he shall pay down.

XXVIII. Ships of War may be entered and searched for prohibited and unaccustomed Goods, and to bring them ashore to the King's Warehouses, and the Commissioners or Head Officers may leave aboard Officers to look after them, that none be unladen or embezzled, on Pain of Forfeiture of 100*l.* And if Goods are concealed on Ship-board after such time as the Ship is cleared, to forfeit 100*l.* and then any with a Writ of Assistance out of the Court of *Exchequer*, to go in the Day-time to any Place, and enter and seize. ^{14 Car. 2. c. 11.}

Goods conveyed secretly into Ships, and carried away without paying the Subsidy and Duties, the Owners and Proprietors forfeit the double Value, except Coals, which only forfeit the double Custom and Duty.

XXIX. There are Allowances to be given Merchants for defective and damaged Goods of 5 per Cent. on all Goods imported, and 12 per Cent. on all Wines to be allowed upon Debentures; but if they shall ship out less than is in the Certificate, then the Goods therein mentioned, or the Value thereof, shall be

be forfeited, and the Owner or Merchant shall lose the Benefit of receiving back any of the Subsidy: And Goods shipped out are not to be landed again in *England*, on Pain of Forfeiture of those Goods.

All Goods coming out of, or carried into *Scotland*, by Land, shall pass through *Berwick* or *Carlisle*, and pay Custom as others, on Pain of Forfeiture.

And although that by this Act there are many Allowances to be made, especially to Merchants Denizens, yet the Parliament have ever been so careful as to bound the same, that is, it shall be to such who traffick in Ships; (which are indeed the Bulwark of this Isle) and therefore if such Merchandize shall be transported out in any Galley or Carack, they are obliged to pay all manner of Customs, and all manner of Subsidies, as any Alien; but in regard that Herring and Fish are, and have been accounted, one of the principal Commodities, and generally finds a Vent or Market in those Kingdoms and Countries that usually employ such sort of Vessels, those Commodities may be transported in them as well as Ship from any Port or Harbour within this Realm, without paying any Subsidy or Poundage for the same; but then such Fish must be taken by the Natives of the Kingdom, and transported by them, otherwise to pay as Aliens.

And whereas all manner of *Woollen* Cloths, as well white as coloured, unrowed, unbarded, and unhorn, and not fully dressed, are prohibited by Law to be transported, His Majesty was graciously pleased to grant * unto *Frances* Countess of *Portland*, as well for her Alliance in Blood, as also for the many Crosses and

* *Per Letters*
Patents, bearing Date
24th of Feb.
27 Car. 2.

and Calamities which she hath suffered by the Loss and Death of her nearest Relations in his Majesty's and his Royal Father's Service, full Power for one and thirty Years, to licence the transporting of such Goods *non obstante* such prohibitory Laws; the which is now put in Execution by Agreement, and the Composition with her Deputies at the Custom-house.

C H A P. XVI.

Of the Right of Passage : Of imposing on the Persons and Goods of Strangers for Passage through the Seas.

- I. *Of the Right of harmless Utility excepted tacitly in the primitive Dominion of Things.*
- II. *Where Passage ought to be open, and where the same might be implicitly provided for in the first Institution of Property, and under what Cautions.*
- III. *Of the same Right in reference to Goods and Merchandize.*
- IV. *If Passage admitted, whether Tribute or Toll may be imposed.*
- V. *Where Imposition may lawfully be laid, and for what Causes; and of the King's Prerogative in that Point.*
- VI. *Whether lawful to stay in others Country, and to build for a Season.*

I. **H**AVING in the foregoing three Chapters observed somewhat of *Customs* and *Impositions* laid *de facto* within the Realm, and that by Acts of Parliament, or the Consent of the three Estates, it may not seem amiss to inquire, what Imposition the King of his Prerogative may impose on Strangers

Strangers and their Goods passing through his Territories and Seas; and in that to inquire of the same in reference to Persons and Goods.

Besides the Right of Necessity, which seems to be excepted in the first Institution of Dominion, there is another Relique of old Communion, namely, the Right of harmless Uti-

Cic. de Offic. 1. lity: For why should not one (saith Cicero) without his own Detriment, be may communicate to another in those things that are profitable to the Receiver, and to the Giver not charge-
Sen. de Benef. 4. Sympf. 7. able? Therefore Seneca saith, It cannot be called a Benefit to give leave to another to light his

Fire by yours. We read in Plutarch, it is not lawful to spoil our Victuals when we have more than enough, nor to stop, nor hide a Fountain, when we have drank our Fill; nor to abolish the Way-marks, either by Sea or Land, which have been useful to us: So

Leg. quædam D. de rer. divis. a River as a River is proper to that Prince, or that Lord, or that People, within whose Dominion or Royalty it runs, and they may make a Mill on it, (unless it be common, as a High-way) and may take what Fish the River yields, but the same River as a running Water remained common as to drinking or drawing of it, notwithstanding as to the Fishing, and the like, it may be peculiar.

II. Again, Lands, Rivers, nay, if any part of the Sea be come into the Dominion or Property of any People, it ought to be open to those that have need of Passage for just Causes, namely, being expelled by Force out of their own Country they seek void Places, or because they desire Commerce with remote Nations: The Reason here is the same which hath been mentioned * elsewhere, because

Dominion

* *Lib. 1. c. 1.*
§. 3, & 4.

Dominion might be introduced with a Reception of such Use † which profits these, and hurts not those; and therefore the Authors of Dominion are to be supposed willing rather to have it so, than that such a Restriction, which perhaps in the end may destroy Society: However this hath its *quantum*; for though harmless Passage may be excepted in the first Institution of Dominion, yet that is to be understood when Leave is granted: And though Fear of the Multitude, which is to pass, cannot take away that Prince his Right through whose Territories or Seas they go; yet it follows as naturally, that in the Institution of such Liberty that Prince or People may provide; and if they have any probable, or any reasonable Cause, interdict the Passage, till Security or Hostages are pledged for their peaceable Passage, nay, without declaring their Reason, may interdict them absolutely any manner of Passage, if there be any other way to pass in Safety; and therefore at this Day, by the Laws of *England**, the King may interdict any Nation or People whatsoever to pass through his Seas, without Leave first obtained to that Purpose, and may visit all Ships, be they of War or Traffick, that shall occur or be in the same.

† Sero. ad 7. En. littusq; rogamus innocuum, cujus vindictio, ait. nulli possit nocere.

Plutarch relates, that Cimon going to aid the Lacedæmonians, led his Army thorough Corinth, but being reprehended by the Corinthians for not asking Leave of the City: Nam et qui fores alienas pulsas, non intrat nisi domini permisso: at vos, inquit, Clioneorum & Magarensum fores non pulsastis sed perfregistis consentes omnia patere debere plus valentibus. However, Passage is and must be requested; but in lieu of that, the striking of the Flag, and lowering the Top-sail, is in Token of that Right due to his Majesty in the *British* Seas. * *Vide lib. 1. cap. 4. and Selden's Mare Clausum.*

III. Nor is Passage only due to Persons, † That is, by but to Merchandize also; for no Man hath the Laws of Right † wilfully to obstruct the way of Commerce to any Nation with any other that is Nations and remote, because the Permission of Trade is those of Countries may.

*In Legat.
Caum.*

*Quomodo au-
tem satis dignè
quis explicet
facilitatem ad
mutua Com-
mercia nobis
datam? Ne
enim itineris
longitudo im-
pedimentum
aliorum ad
alios commean-
tibus adferret
breviorum vi-
am, maris
scilicet, ubiq;
terrarum dis-
posuit Deus, ad
mundum tan-
quam domum
communiter
inhabitantes
crebro invicem
inviserimus;
et apud se nata
quisque alteri
communicans
vicissim, com-
mode acciperet res apud illum abundantes; ac sic exiguum tenens terræ
partem, ita tanquam si teneret universam, frueretur eis quæ orbis sunt bo-
nis. Licet itaq; tunc tanquam in communi mensa convivarum unicuiq; ea
quæ sibi opposita dare alteri longius accumbenti, ac contra quæ apud ipsam
sunt accipere nanu tantum extenta.*

for the Interest of human Society, and is not discommodious to any one, and to that Purpose *Pbilo* speaks: *On the Sea all Ships of Burden safely pass according to that Right of Commerce which is between all Nations arising from the Desire of natural Society, while they supply one another mutually with what the one wanteth, and the other can spare; for Envy hath never invaded either the whole World, or the greater parts thereof.* And *Plutarch* speaking thus of the Sea: *This Element hath made our Life sociable and perfect, that otherwise would be wild and without Correspondence; it supplies our Wants with mutual Aids, and by Exchange of Things needful, it procures Fellowship and Friendship.* And the Wisdom of God is highly to be admired, who hath not granted all things to every Land, but hath distributed his Gifts to several Countries, that Men having need of one another, might maintain Society for their common Good; therefore hath he endowed Man with Knowledge, and Understanding to invent and build Ships, to govern and guide them by those Lamps of Heaven, and other Instruments of his Divine Wisdom, enabling thereby the Merchant to convey to all what any Place affords: According to that of the Poet.

*What Nature any Land denied,
By Navigation is supplied.*

But as the Sea is free and open for Traders, yet nevertheless the Passengers are subject to such

such Restrictions, Laws and Ordinances, as those Sovereign Princes shall make of Force in those Places, where they have an Accession of Property and Sovereignty.

IV. But admitting that such free Passage may be granted, as above, whether Tribute may be imposed by him that rules the Land, upon Merchandize passing by Land or by River, or by part of the Sea, which may be called an Accession of the Land, (that is, the Place through which they pass, is as much under the absolute Jurisdiction of the Prince, as the very Land itself :) certainly whatsoever Burdens have no Relation to the Merchandize, no Equity suffers the same to be imposed on the same; neither can Poll-money put on the Inhabitants to sustain the Charge of the Commonwealth, be exacted of Passengers. *Vide Strabo. lib. 8. & lib. 16.*

V. Nevertheless, if either to secure the Passengers Goods and Vessels from Pirates and others, or for the erecting of Beacons, Light-houses, and other Sea-marks, and such like, * there indeed some Compensation may be laid upon the Commodities or Ships passing through, so that the Measure of the Cause be not exceeded; or as my Lord Coke observes in the Case of the Halage-money, † it be reasonable; for upon that depends the Justness of Tributes and Toll: And upon those Reasons the *Venetian* in the *Adriatick*, the King of *Denmark* in the *Baltick* Sea, does demand the same; and the King of *England* may do the like in the *Chambers* of his Empire, and that by his Prerogative; for the same is not so much compulsory to any to pay, but to them that will take Benefit of such Accommodation. *Vide the Plea of the Venetian Lawyers at the End of Mr. Selden's Mare Clausum.*

Les Comons praiont que lou le Roy ses Progenitors de long temps haut estre Seigneur de Mer, & ore est venus que le Roy Seigneur des Coſts de ambideur partes vel Mer, & par ceo praiont le Roy de imposer un imposition sur Estrangers passant purmy la Mer.

Pereg. lib. 1. de Jure Fisci. c. 2. num. 27. Strabo relates, that the *Corinthians*, even from the most antient of Times, received Tribute of the Commodities, which, to avoid the compassing of *Malta*, were carried by Land from Sea to Sea. So the *Romans* received a Price for the Passage of the *Rhyné*. But this Right of imposing on Ships and Goods passing through some Territories, is found cruel, especially when they must pass through the Territories of a powerful and fierce People, then it is heavy to the Merchant to compound, for it's often done on hard and grievous Terms.

* *Servius ad
nam loc.*

† *Plutarch
Pericle.*

VI. Again, to stay some time for Health Sake, or for any other just Cause, ought also to be permitted to Passengers, for this too is among the innoxious Utility; wherefore *Illaneus* in *Virgil*, * when the *Trojans* were prohibited to stay on the Shore of *Africk*, is bold to invoke the Gods as Judges: And the Complaint of the *Megarenses* against the *Athenians*, who drove them from their Havens † against common Right, was approved by the *Greeks*, so that the *Lacedæmonians* esteemed no Cause to create a War more just: Hence it is, that at this Day it is held by all Lawyers, that it is lawful (either in cases of Wreck, or any other Exigency upon such landing) for Passengers to build a Cottage or Hut on the Shore to shelter them for a Season, though
we

we grant the Shore to be possessed by the Inhabitants: 'Tis true, *Pomponius* does think there ought to be the Prætor's Decree; but certainly that extends only to those Passengers, that, being expelled their own Countries, desire perpetual Habitation, and a Subjection to the Government of the Place where they desire to dwell.

Occupantis enim est possessio litæris unde ostenduntur crudeles qui etiam à communibus prohibeant.

The END of the SECOND BOOK.

B O O K III.

C H A P. I.

Of Freedom, Bondage, Slavery, Exile, and Abjuration.

- I. *Of Freedom by the Law of Nature, and of Bondage, Slavery, or Captivity introduced by the Law of Nations.*
- II. *Of the Actions that subject Man to Bondage.*
- III. *Of the Dominion over Slaves, Bond-men, and Captives.*
- IV. *Of the Cause, or Reason of such Dominion.*
- V. *That this Right or Dominion was not a Law universal.*
- VI. *Of Bondage or Slavery, where discontinued by the Christians and Mahometans.*
- VII. *Of a Servitude at this Day, standing with the Laws of a Christian Commonwealth.*
- VIII. *Of Manumission and Freedom by the Hebrew and Roman Law, and by the Laws of England.*
- IX. *Of disfranchising, the several ways.*
- X. *Of Abjuration and Exile; and what Operation it hath.*
- XI. *Of Freedom in Cities and Corporations, in reference to Merchants, Traders, and Foreigners.*

L. libert. §. 1. I. IN the primitive State of Nature, no
D. de statu hominum. Fi- Men were Servants; yet it is not re-
ant etiam servi pugnant to natural Justice, that by the Fact
liberi homines of Man, that is, by *Covenant* or *Transgression*,
captivate de Servitude should come in; therefore Servi-
jure gentium. tude is brought in by the *Laws of Nations*.
Bracton, l. 1. II. Hence it is, that those that will yield
c. 6. up their Persons, or *promise* Servitude, are
 accounted

accounted *Slaves*; so likewise all that are taken in *publick War*, and brought within the Guards of their Conquerors; nor is Transgression necessary, but the Lot of all is equal after the War is begun, even those whose ill Fortune subjected them to be deprehended within the Enemies Bounds; nor are they Servants only themselves, but all their Posterity for ever.

III. The Privileges of this *Right of Domi-* *L. & serwo-*
nion are infinite; since there is no Suffering *rum* §. 1. *D.*
 which may not be imposed on such, nor Work *de statu homi-*
 which may not every way be extorted from them: *num. Apud*
 So that even the Cruelty of Masters became *omnes per æq;*
 almost unpunished, till the Municipal Laws *gentes, ait*
 of Countries set Bounds to their Rigour and *Caius ani-*
 Power. *madvertere*
possumus domi-
nis in seruos

vita necesse; potestatem fuisse. Co. Instit. fol. 116. b. l. 1. D. de his qui sui sunt juris.

Nor are the Persons become theirs only that have the Power of them, but also all that they have; for such unhappy Persons can have nothing of their own.

Hence it was, that that excellent Law in favour of such was introduced by the Romans, called *Lex Cornelia*, which was, when a Cap- *Leg. Cornel. ff.*
 tive, *intra præsidia hostium*, died in his Cap- *de Testam. &*
 tivity; if he had made a Will, before his *Leg. Cornel. ff.*
 being taken Captive, yet such a Captive *de vulg. sub-*
 should in favour of such Will, and for the *stit.*
 upholding of the same, be feigned to be *In jure Postli-*
 dead, and *in puncto temporis*, immediately *mini leg. re-*
 before such his being taken Captive; and so *tor. & l. in*
 by that legal Fiction of Death, his Will be- *bello §. 1. &*
 came firm and valid, as if he had really died *l. bon. ff. d.*
 without ever being taken by the Enemy. So *Capt. & §. 4.*
 likewise if one had been made a Slave, yet if *D. quibus mod.*
 he had returned out of his Captivity, that for *ius patr. sol-*
vit.

the Preservation of his Right and Propriety, he was feigned as if he had never been absent, and was immediately reintegrated into his pristine State and Condition.

And Fortescue conceives, it began *ab homine, et pro vita introducta est servitus, E. sed libertas à Deo homines indita natura, quare ipsa ab homine sublata semper redire gliscit, ut faciat omne quo libertate naturali privatur, cap. 42.*

IV. Now all these Privileges and Immunities were introduced by the *Laws of Nations*, for no other Reason, but that their Captors, tempted by so many Immunities, *might willingly abstain from that cruel Rigour of slaying their Prisoners.*

Hence it is, that the Captor's Dominion is extended to the Children; for should such *use their highest Right they would not be born*; but Children that are born before that Calamity, and were never taken Prisoners, are freed from that unhappy State.

V. Though this Dominion or Right was generally acquired in most Nations, yet was not the same an *universal Law*; for amongst the *Jews*, Refuge was granted to Servants who fell into that Calamity by no Fault of their own. And the State of *Christendom* at this Day is apparent, That Prisoners taken in War do not become perfect Slaves, as of old, but only remain in the Custody of the Captor till *Ransoms are paid*, whose Valuations are generally at the *Pleasure* of the Conqueror; yet Persons of eminent Quality, as *Generals*, and the like, such Persons, * if taken by a common Soldier, yet he has no Advantage by the same; for such a Captive is become Prisoner immediately to that Prince or State under whom the Captor served: But if it be the Lot of an *inferior Soldier* to become a Prisoner of War, he is then become absolutely the Captors to dispose of; but he wanting

* Article of War, Anno 1673, for his Majesty's Forces, Article 24.

ing those Necessaries in the Field for himself, which he ought to provide for his Prisoner, commonly waves that Interest, and generally yields him up as a Prisoner of War, to be disposed of by that Prince or State under whom he serves.

Bart. in l. nam. & serv. D. de rebus gestis.

VI. Slavery in *Christendom* is now become obsolete; and in these latter Ages the Minds of Princes and States having as it were universally agreed to esteem the Words, *Slaves, Bondman, or Villain*, barbarous, and not to be used; and that such as are taken in War between Christian Princes, should not become Servants, nor be sold, or forced to work, or otherwise subjected to such servile Things, but remain till an Exchange of Prisoners happen, or a Ransom paid, as afore: Nay, the very *Turks and Mahometans* at this Day generally observe this among themselves, not to make Slaves of those of the *Mahometan Religion*, though taken in War; and that which is most to be admired, a Christian fallen into that miserable State, renouncing his Religion, and becoming a *Mahometan*, immediately upon his Circumcision obtains his Freedom with a *Recompence*. The Cruelty of those Infidels to those unhappy Persons, together with the Reward of renouncing, hath given Cause to many a brave Person to become *Renegade*; the which being considered by the Parliament of *England*, they made a Provision for such miserable Persons as should be taken by *Turkish and Moorish Pirates*.

In the Wars of the French with the Spaniards in Italy, a Horseman was ransomed for the 4th of his yearly Pay.

Vide Mariana l. 27. c. 18. And in the last Belgick War, the English dismiss all the Flemings that were taken in War, as they did the like with

P. 4

VII. Though

those of *England*. *Anno 1671. 2. Quam non sit ardua virtus servitium fugisse manu*, it is none of the hardest Virtues to embrace Death to avoid Slavery.

† 16 Car. 1. cap. 24. it's expired. Mr. Thomas Betton, a *Turkey Merchant*, left a very considerable Sum of Money to the *Ironmongers Company*.

Company, to be laid out in the Purchase of an Estate, the Produce of which is appropriated to the Redemption of *British Slaves*.

Salk. 666.

667. See

Pref. to Laws concerning Masters and Servants.

VII. Though *Slavery* and *Bondage* are now become discontinued in most Parts of *Christianity*, and to that Degree, that for the Person of a Man, be he *Moor* or other *Indian*, a *Trover* is not maintainable by the Laws of *England*, yet there may be a *Servitude* which may amount to a Labour or Suffering equal to that of Captives; the which may be justifiable; for Men, either through Poverty, and the like, may oblige themselves by Contract, for Maintenance to a *Servitude* that's perpetual, *i. e.* for Life, and so for Years; but at this Day there is no Contract of the Ancestor can oblige his Posterity to an hereditary Service; nor can such as except those Servants, exercise the antient Right or Dominion over them, no nor so much as to use an extraordinary Rigour, without subjecting themselves to the Law. If an Eye or a Tooth had been struck out injuriously, by the *Hebrew Law*, Freedom was immediately due; and by the *Greeks*, if Servants had been ill treated, it was lawful for them to demand a *Sale of themselves to others*. At *Rome* the Statues became Sanctuaries for Servants to implore the Help of the Governors against Rigour, Hunger, or any other intolerable Injury inflicted by their Masters; and even in *London* at this Day in *Servitude*, (amongst the many Causes, as not Inrollment of the Indentures, not instructing in the Art, Want of Necessaries, *infra statam* 14, &c.) Cruelty, Hunger, Rigour, immoderate Correction, and the like, are Causes sufficient, on a *Monstrance* or Petition to the Chamberlain, to dissolve the Contract, though under Hand and Seal, and to decree

The *English* Merchants and others for the *Virginia* and other Plantations, do hire Servants for a Term of Years.

Exod. 21. 26.
27.

Vide the Statute of *Elix. c. 4.* which hath provided the like Remedy in other Places; and see Laws concerning Masters and Servants.

decree all or part of the Dowry, or Sum given (if any) to the Servant; and if Cruelty hath been in the Case, to expose the Master to answer Damage to the Servant.

VIII. *Ulpianus* observes, after that by the Laws of Nations Servitude came in, then followed the Benefit of Manumission. By the *Hebrew Law*, after the Expiration of the Time agreed on, the Servant was to be manumitted, and that not without Gifts, like *London's Freedom*; by the Custom of which the Master is always at the Charge of Cloathing, and discharging the Chamberlain's Fees. By the *Roman Law*, every Son was in such Subjection to his Father, that before he could be released of this Subjection, and made free, he should by an imaginary Sale be sold three Times by his natural Father to another Man, who was called by the Lawyers *Pater Fiduciarius*, that is, a Father in Trust, and then be bought again by his natural Father, and so manumitted by him, and then he became free: This Form of setting free was by them called *Emancipatio, Freedora*.

Deut. 15. 13. The *Russians* having seized on the Country of *Illyria*, and made it their own by Conquest,

their Victory pleased them so highly, that thereupon they called themselves by a new Name, *Slaves*, which is in their Language, *Glorious*; but in after time, (that warmer Climate having thawed their Northern Hardiness, and not ripened their Wits) when they were conquered, and made Servants to their Neighbours, the *Italians*, which kept many of them in Bondage, began to call all their Bond-men Slaves. Sir *Walter Raleigh*, Vol. I. p. 282. Edit. 1736.

That *Roman Darling* was to be obtained three Ways: *Vide leg. 12. Tabul. Sigo-*

1. By Birth; * both, or at least one of their Parents being free, and such were called *Cives Originarii*. *nus de jure Roman. Justin Instit. lib. 1. tit.*

2. By Gift and Cooptation; when the Freedom was bestowed on any Stranger or Nation, *de Ingeniis, v. Franc. Silo in Catlin. art. 4.*

tion; and then they were termed *Civitati Donati*: And so we read, that *Cæsar* took in whole Nations into the Freedom.

Lastly, by *Manumission*; which was thus: When as the Servant was presented by his Master before the *Consul* or *Prætor*, the Master laying his Hand upon his Servant's Head, used this Form of Words, *Hunc liberum esse volo*; and with that turning his Servant round, and giving him a Cuff on the Ear, he did

Goodwyn Antiq. Rom. 4. 33. 34.

emittere servum à manu: The *Prætor* laying then a certain Wand or Rod, called *Vindicta*, upon the Servant's Head, replied in this manner, *Dico eum liberum esse more Quiritum*; then the *Litlor* or *Serjeant* taking the Wand, did strike the Servant on the Head, and with his Hand struck him on the Face, and gave him a Push on the Back; and after this he was registered for a *Freeman*. This being performed, the Servant having his Head shaven purposely at that Time, received a Cap as a Token of Liberty.

Tertullian. de resur. Carn.

Tertullian observes, that at this Time of their *Manumission*, the Servants received from their Masters a white Garment, a Gold Ring, and a new Name added to their former.

Magna Charta, cap. 14.

By the *Laws* of *England*, every Subject born within the King's Dominions, is a *Freeman* of this Realm, as appears by the *Grand Charter*, cap. 14, yea, though he be a *Bondslave* to a Subject: † But a *Stranger* born is no *Freeman*, till the King have made him a *Denizen*, in whose Power alone, without the Help of any other, one may be made free.

† Vide postea, §. 9.

To be a *Freeman* of the Realm, the Place of *Birth*, is held more considerable than the Quality of the *Person*; yet by the Opinion of *Hussey* Chief Justice, and in *Calvin's* Case of the

1 Rich. 3. fol. 4.

the *Post-Nati*, it is held for Law, that if *Ambassadors* of this Realm have Children born in *France*, or elsewhere, the Father and Mother being natural born Subjects, the Children are free of the Realm of *England*: But if either the Father or Mother of such Children were an *Alien*, then are not those Children free.

But the Law is conceived to be otherwise *Bacon's Case*, at this Day. The Statute *de Natis ultra mare*, *Croke Charles* 25 E. 3. declares the Issue born of an *English* 601.

Man upon an *English* Woman, shall be a *Denizen*; for upon the Construction of this Statute it has been adjudged more than once, that if an *English* Man marry a *Foreigner*, and has Issue by her born beyond Seas, the Issue is a *Natural born Subject*. *Jenkin's Case* 1, 2, 3.

If Baron and Feme *English* go beyond Sea without Licence, or tarry there after the Time yond Sea, limited by the Licence, and have Issue, that the Issue is an *Alien*, and not inheritable, contrary to the Opinion of *Hussey*, 1 R. 3. 4. *Hide* against *Hill*. *Cro. Eliz.* 3. 4 *Leon*. 110. *Cro. Charles* 602. *Steven's Case*, cited in *Bacon's Case*.

An *English* Merchant had Issue by a *Polish* *English* Merchant marries a Woman in *Poland*, and devises his Copyhold Land to the Use of his Children; *per Crook*, an *Alien*, and the Children are not Aliens. 1. Because the Father went with Licence, being a Merchant. *Curiam*. *Alien*.

2. In our Law, *Partus non sequitur Ventrem*.
3. Blood is between him and his Issue. Several of the Judges held, that the Words in the *Stat. 25 Ed. 3. cap. De natis ultra mare*, whose Fathers or Mothers be or shall be of the Allegiance of our King, shall be taken distributive, Father or Mother, and not copulative, *Littleton's Rep.* 23, 26, 27.

IX. *Disfranchising* by the *Romans*, called *Capitis diminutio*, was three-fold, *Maxima*,
Media,

OF FREEDOM, BONDAGE, BOOK III.

Media, and *Minima*; the least Degree was, when the *Censors* pulled a Man from a higher Tribe down to a lower and less honourable; or when by any *Censure* they disabled a Man from suffraging or giving his Voice in the publick Assemblies; such as were thus in the last manner punished, were termed *Ærarii*, and in *ærarios veluti, quia omnia alia jura Civium Romanorum præterquam tributum & æris conferendi amiserunt*. Gellius relates, that P. Scipio Nasica and M. Pompius, being *Censors*, taking a View of the Roman Knights, observed one of them to be mounted on a lean starvling Horse, himself being exceeding fat; whereupon they demanded the Reason, why his Horse was so lean, himself being so fat? His Answer was, *Quoniam ego, inquit, me cura; equum vero servus*.

Æ Gellius
No. 2. Attic.
l. 3. c. 17.

First granted
17 Job. Reg.
revived 9 H. 3.
and since confirmed
above thirty times.

By the antient Laws of *England*, and by the *Great Charter*, no *Freeman* shall be taken or imprisoned, but by the lawful Judgment of his Peers (that is, by Jury, Peers for Peers, ordinary Juries for others who are their Peers) or by the Law of the Land; which is always understood by due Process of the Law, and not the Law of the Land generally; for otherwise that would comprehend Bond-men, (whom we call Villains) who are excluded by the Word *Liber*; for such Bond-man might be imprisoned at the Pleasure of his Lord, but a Free-man neither could nor can, without a just Cause; nor does the Privilege extend to private Actions, or Suits between Subject and Subject, but even between the Sovereign and the Subject. Hence it is, that if a Peer of the Realm be arraigned at the Suit of the King for a Murder, he shall be

betried by his * Peers, that is, by the Nobles. But if he be appealed of Murder upon the Prosecution of a Subject, his Trial shall be by an ordinary Jury of twelve Freeholders: And as the *Grand Charter* did, and does protect the Persons of Freemen, so likewise their Freehold; by the same *Charter* it is declared, that the King, or his Ministers, shall out no Man of his Freehold without reasonable Judgment; and so it was ruled upon a Petition in Parliament, setting forth, that a Writ under the Privy Seal, went to the Guardian of the Great Seal, to cause Lands to be seized into the King's Hands, and that thereupon a Writ issued forth to the Escheator to seize, against the Form of the *Great Charter*; upon Debate of which, the Party had Judgment to be restored: The greatest and most explanatory Act, which succeeded in Point of Confirmation, was that of *Edward the Third*; the Words are, That no Man, of what Estate or Condition soever he be, shall be put out of the Lands and Tenements, nor taken or imprisoned, nor disinherited, nor put to Death, without he be brought to answer by due Process of the Law, that is, by the Common Law.

* The Lord Morly and Monteagle's Case for the supposed Murder of one Hastings, 15 Car. 2. 10 E. 4. 6. 33 Hen. 8. Bro. Title, Trials.

8 Ed. 3. Rot. Parl. m. 7.

28 E. 3. c. 3.

2. *Diminutio media*, was an Exilement out of the City, without the Loss of ones Freedom; the Words of the Judgment or Sentence were, *Tibi aquæ & igni interdicto*.

3. *Diminutio maxima*, was the Loss both of the City and the Freedom, and by his Judgment or Sentence was obliged and limited to one peculiar Country, all other Places in general being forbidden him.

There was a fourth kind of Banishment, disfranchising, called *Relegatio*; which was the

the

Ovid. de Trist. lib. 2. *Adde quod editum, quamvis immitte minaxque,
Attamen in pœnæ nomine lenè fuit :
Quippe relegatus, non exul dicor in illo.*

The Laws of *England* in this Matter have some Resemblance with those of the *Romans*; for *Brañon* observes four Distinctions :

1. *Specialis, hoc est, interdictio talis Provinciæ, Civitatis, Burgi aut Villæ.*
2. *Generalis, Interdictio totius Regni, & aliquando est.*
3. *Temporaria, pro duobus, tribus, quatuor, aut pluribus annis, aut, &c.——*
4. *Perpetua, pro termino vitæ, & exilium est aliquando ex arbitrio Principis, sicut in exilando Duces Hertfordiæ & Norfolciæ, per Regem Richardum Secundum, & aliquando per Judicium Terræ, ut fit in casu Piers de Gaveston, & etiam in casu Hugonis de le Spencer Junioris, qui ambo fuerunt exilit per Judicium in Parlamento.* So likewise was that of the Banishment of the Earl of *Glarendon*, who died beyond Sea*.

* 19 Car. 2.
c. 10.

Mr. *Selden* observes, that in the Judgment of the *Common Law*, as also by the Time of the Statute Law; and in the Statute of *K. Hen. the First*, and of other Kings, both before and after him, that if any Man, accused of a Capital Crime done at Sea, being publickly

X. *Abjuration* was also a legal Exile, by the Judgment of the *Common Law*, as also by the Statute of *Westm. the second, cap. 35.* he that ravishes a Ward, and cannot render the Ward unmarried, or the Value of his Marriage, must abjure the Realm; and this is a *general Exile*. And by the Statute made 31 *Ed. 1.* Burchers are to be abjured the Town, if they offend the fourth Time, in selling measled Flesh; and this is a *special Banishment*.

A Man

called five Times by the Voice of the Cryer, after so many several Days assigned, did not make his Appearance in the Court of Admiralty, he was banished out of England; & *de mere appartenant au Roy d'Angleterre*, for forty Years, more or less, according to his Offence. *Mar. Claif. fol. 12.*

A Man exiled does forfeit these things.

1. He loseth thereby the Freedom and Liberty of the Nation out of which he is exiled.

2. He forfeits his Freedom in the Borough or City where he was free; for he which forfeits the Freedom of the whole Realm, forfeits his Freedom in every Part.

3. The Law accounts him as one dead; ^{34 E. 1. 1 H. 4.} for his Heir may enter, and so may his Wife ^{3 Bulst. 188.} enter into her own Lands, and may sue an ^{1 Inst. 132,} Action as a *Feme sole*. ^{133.}

4. He shall forfeit those Lands which he shall purchase in the Realm, *during his Banishment*; for he, during his Banishment, is as much disabled to purchase as an Alien; for *fit alienigena* by his Banishment, and he is observed to be in a worse Condition than an Alien; for he is marked with *indignatio Principis*. 'Tis true, he cannot forfeit neither Title of Honour, or Knighthood, nor the Lands he had before Exile, unless there be special Sentence or Judgment, as that of the *Spencers* *.

*Totle's Mag.

If the Father be in exile, this hinders not the Freedom of the Son, for the same is not a thing descendible; for should it be so, then the Banishment of the Father would make a Forfeiture of the Freedom; but the Son has this Freedom by his own Birth, as a Purchase, and not by the Death of his Father by Descent: Like the Case where J. S. hath many Children, and then he confesseth himself a Villain to J. D. in a Court of Record; yet his

na Charta.

fol. 50, 51.

his Children formerly born are Freemen, and no Villians; the Reason is, because they were free by their own Births; but the Inheritance, is intrahled, because it is to come to the Heir by Descent.

8 Co. 126.
Case City of
London.

XI. A Freeman of a City or Borough may be made divers ways, as my Lord Coke observes.

1. By Service.
2. By Birth, by being the Son of a Freeman.
3. By Purchase of Redemption.
4. At *Bristol* by Marriage.

Sir *John Davies* in his *Irisb* Reports observes the same for Law. *St. Paul* was born at *Tarsus* in *Cilicia*, which was under the Obedience of the *Romans*, by virtue of which he challenged the Privilege of a *Roman Citizen*; but it was accounted no more than a *National Freedom*; like that of *Calvin*, who claimed the general Freedom of an *Englishman*, being born in *Scotland*, but under the Obedience of the King of *England*; but that Challenge made not *St. Paul* free of the private Customs, Privileges, and Franchises of *Rome*, no more than *Calvin's* Birth made him a free Citizen of *London*, to the particular Customs of that City.

King Edward
the Third
granted to
John Falcount

The King, by his Letters Patents, cannot make one a Freeman of *London*, * yet he may thereby make him a Freeman of his Kingdom.

de Luca, an Apothecary of the City of *London*, *quod ipse omnibus libertatibus quas Civitas Civitatis prædictæ habent in eadem Civitate alibi infra Regnum Angl' nostrum habeat, gaudeat & utatur, &c. Rot. Pat. 32 E. 3.* in the Tower; yet it was held, that this Grant did not make him a Freeman of the City, for it cannot be attained but by one of those ways. * Case of the City of *London*, 8 Co. 126.

If one born in a City, of Parents that are not free, the Child hereby is no Citizen by Birth;

Birth; and if one be born of free Parents out of the Place of Privileges, as *London*, &c. he yet is a Freeman by Birth; yet in the *Charter* granted to *Yarmouth*, the Words were, *Concessimus Burgenſibus de Magna Yarmutha de villa prædictæ oriundis*, that they should have such Liberties: So that special Words may alter the Case.

London had many Royal Franchises granted them from time to time, and were often by former Kings successively confirmed, nor wanted they a Share when the great Charter was granted, to have their antient Liberties secured; nor were the succeeded Princes slack in their Royal Grants and Confirmations; but especially *Richard II.* who in Parliament granted and confirmed to them all their ancient Customs and Liberties, with this Clause, *Licet usi non fuerint vel abusi fuerint*, and notwithstanding any Statute to the contrary; amongst the Number of their many Privileges, the Freedom of the same was accounted of no small Importance, since in divers Parliaments it was very much aimed at, and endeavoured to be impaired; but at last they obtained a most gracious and Royal Confirmation in Parliament of their ancient Liberties, amongst which it is declared, that no Merchant, being a Stranger to the Liberty of the said City, should sell any Commodities within the Liberty of the said City, to other Merchant-Strangers; nor that any such Merchant-Stranger should buy of any other Merchant-Stranger such Merchandize within the Liberty of the said City, without Forfeiture thereof, saving that any Person, Lord, Knight, &c. may buy within the Liberties of any Merchant-Stranger Merchandizes in gross for their

Confirmed by
Magna Charta, cap. 9.
Rot. Parl.

7 *R. num. 37.*

9 *E. 2. cap. 2.*

29 *E. 3. cap. 2.*

27 *E. 3. c. 11.*

7 *H. 4. cap. 1.*

9 *H. 4. this Act is not printed.*

own Use, so that they do not sell them again to buy any other. And as this City by Custom may preclude any Person, not being free of the same, to sell in such manner upon such Pain; (a) so any other City, which are Boroughs or Cities by Prescription within this Realm, may have the like Custom, and the Goods sold or bought by such, may be subjected to Forfeiture; but the same cannot be good by Charter or Grant. 8 Co. 125. a.

(a) *Vide Salk.*
204. where
'tis held, that
such Custom
is an Injury to
the Party, and
a Prejudice to
the Publiick.
Lucas's Rep.
146. 173.
7. Bagg's
Cafe.

11 Co. 93. b.

A compleat Freeman is such a one as hath challenged his Freedom, and taken the Freeman's Oath, and is admitted into the Society and Fellowship of the Freeman, Citizens, and Burgesse; otherwise, he hath but a bare Right to his Freedom.

1 *Peer Wil-*
liam's Re-
ports 181.

A Bond to restrain a Man from trading in a particular Place, if made upon a reasonable Consideration, is good; *secus* if it be on no reasonable Consideration, or to restrain a Man from trading at all.

C H A P. II.

Of Aliens, as in relation to their Estates Real and Personal.

- I. *Of an Alien his Ability and Disability in the taking and enjoying of Estates Real and Personal.*
- II. *Of his Capacity in purchasing, and Disability to transfer by an hereditary Descent.*
- III. *Of the Rules of Descents, according to the Laws of several Countries.*
- IV. *Of Descents, according to the Rules of the Common Law of England, lineal and collateral.*
- V. *Of Impediments in one that is not the medius antecessor.*
- VI. *Of Impediments in one that is the medius antecessor lineal and collateral.*
- VII. *Of the Statute of Natis ultra Mare, and Issues born beyond Seas.*
- VIII. *The Lord Coke's Opinion, that if an Alien has Issue two Sons Denizens, the one purchases Land, and dies, the other cannot inherit them, debated and refuted.*
- IX. *Of Foreign Births, which do not create a Disability.*
- X. *Of Aliens not disabled by Law to bring either real or personal Actions.*
- XI. *Of Office that must entitle the King to an Alien's Estate.*
- XII. *Of some particular Immunities, and other Matters relating to an Alien.*

I. **A**N Alien is one born in a strange Country 7 Co. 16. a.
 try under the Obedience of a strange Prince and State, Telkerton 199.
 and out of the Legiance of the King of England, and can have no real or
 personal Action for, or concerning Lands; 1 Inst. 2. a. b.
 and therefore if he purchase Lands, Tenements, or Hereditaments, to him and his

Heirs, albeit he can have no Heir, yet he is of Capacity *to take a Fee-simple*, but not *to hold*; for the King upon *Office* found shall have it by his *Prerogative*.

Dyer 283.

So it is if he purchase Lands and dies, the Law doth cast the Freehold and Inheritance upon the *King*.

1 *Inst.* 2. b.

But if he purchase or take a Lease for Years of a House or a Warehouse, which is for the accommodating him as a *Merchant-Stranger*, whose Prince or State is in League with ours, there he may hold the same, for that the same is incident to *Commerce*.

1 *Inst.* 2. b.

And in that case, if he departs and relinquishes the Realm, the King shall have the same; so it is, if he be no *Merchant*.

Pasch. 29 *Elix.*
Sir James
Cross's Case
by the Judges.

The like Law is, if he takes a Lease of Meadows, Lands, Woods or Pastures, the King shall have the same; for the Law provides him nothing *but a Habitation to trade and traffick in as a Merchant*.

1 *Fra.* 417.
Collingwood
and *Pace*.

1 *Sid.* 193.

1 *Lev.* 59.

1 *Keb.* 65,

174, 216,

265, 535,

579, 603,

670, 699,

950.

II. Though he may take by Purchase by his own *Contract*, that which he cannot retain against the King, yet the Law will not enable him by an Act of its own to transfer by hereditary Descent (the Alien dying, his Issue a *Denizen* born, the Land will not descend) or to take by an *Act in Law*; for the Law, *Quo nihil facit frustra*, will not give him an Inheritance or Freehold by an Act in Law, for he cannot keep it.

Therefore the Law will not give him	{	1. By Descent,
		2. By Courtesy.
		3. By Dower.
		4. By Guardianship.

And in respect of that Incapacity he resembles a Person *Attaint*, but with this Difference;
The

The Law looks upon a Person *Attaint* as *Vide Inf.* 8. 2. one that it takes notice of, and therefore the eldest Son attainted overliving the Father, though he shall not take by Descent in respect of his Disability, yet he shall hinder the Descent to the younger.

But if the eldest Son be an *Alien*, the Law takes no notice of him, and therefore as he shall not take by Descent, so he shall not impede the Descent to the younger Brother: As for instance, if there be three Brothers, the eldest an Alien, the other two naturalized, and the middle Brother purchase, and dies without Issue, the younger Brother shall have the Land. 32 Ed. 3.
Cotinage.
Cro. Jac. 539.
Dr. & St. Dis.
al. 1. c. 7.

III. Concerning the Rule of Descents, we are not to govern ourselves therein by the general notions of *Love*, or *Proximity of Nature*, but by the *Municipal* Laws of the Country wherein the Question ariseth; for the various Laws of divers Countries have variously disposed the manner of Descents, even in the same Line and Degree of Proximity: For instance, the Father certainly is as near of kin to the Son, as the Son is to the Father, and is nearer in Proximity than a Brother, and therefore shall be preferred as next of kin in Administration to the Son's Estate.

According to the *Jews*, for want of Issue of the Son, the Father succeeds, excluding the Brothers; and that hath been the Use and Construction of the *Jewish Doctors* upon *Numb.* xxvii. 9. but the Mother was wholly excluded. Ratcliff's
Case.
3 Coke 37.
Seld. de suc-
cessionibus a-
pod Hebræos,
cap. 20.

2. According to the Provision of the *Greeks* for the Succession or Exclusion of the Father, is left doubtful.

1 *Instit.* 10. b.

3. By the *Roman* or *Civil Law*; according to the Estimation of the *twelve Tables*, the Father succeeded in the Purchase of the Son for want of Issue of the Son, under the Title *proxim. agnato*, and so ~~was the Use~~; but my Lord Coke supposes the contrary.

Tit. 1.

*de hæredibus**ab intestato**agnatibus*

Goodwyn

*Antiq; de Test-**tamentis, fo.*

233.

Customs Nor-

*mand. c. def-**cheancres.*

But taking the whole Institution of *Justinian*, the Son dying without Issue, his Brothers, Sisters, Father, or Mother, do succeed him as well to Land as Goods, in a kind of *Coparcenary*.

4. According to the Laws of *Normandy*, (which in some Things have a Cognition with our Law) his Brothers are preferred before the Father, (if the Son die issueless) but his Father before his Uncle.

Lit. §. 3.

5. According to the Laws of *England*, the Sons dying *sans* Issue, or Brothers, or Sisters, the Father cannot succeed, but it descends to the Uncle.

1 *Instit.* 10. a, b.

IV. There be two Kinds of Descent, according to the *Common Laws* of this Realm.

Hales's Hist.

of the Law,

cb. 11.

1. *Lineal*, from the Father or Grandfather to Son or Grand-son.

2. *Collateral* or *transversed*, as from Brother to Sister, Uncle to Nephew, and *è converso*; And both these again of two sorts.

1. *Immediate*, as in Lineals from Father to Son.

Grotius de

*Jure Belli ac**Pacis, lib. 2.**cap. 7.*

2. *Mediate*, as in Lineals from Grandfather to Grand-child, where the Father dying in the Life-time of the Grandfather, is the *medium differens* of the Descent.

Collateral, as in Lineal, from Uncle to Nephew, or *è converso*.

And this mediate Descent, or mediate Ancestor, though to many Purposes it be immediate; for the Father dying in the Life of

the

the Grandfather, the Son succeeds in point of Descent in the Lands immediately to the Grandfather; and in a Writ of *Entry* shall be supposed to be in by the Grandfather, and not in the *post & cui*.

This is called a mediate Descent, because the Father is the *Medium* through whom the Son derives his Title to the Grandfather.

In immediate Descents there can be no Impediment, but what arises in the Parties themselves: For instance, the Father seized of Lands, the Impediment that hinders the Descent must be in the Father or Son, as if either of them be Attaint or an Alien.

In mediate Descents, a Disability of being an Alien or Attaint in him that is called the *medius antecessor*, will disable a Person to take by Descent, though he himself have no such Disability.

In *Lineal* Descents, if the Father be Attaint or an Alien, and hath Issue a *Denizen* born, and die in the Life-time of the Grandfather, the Grandfather dies seized, the Son shall not take, but the Land shall *escheat*.

In *Collateral* Descents, *A.* and *B.* Brothers, *A.* is an Alien or Attaint, has Issue *C.* a *Denizen* born, *B.* purchases Lands, and dies without Issue, *C.* shall not inherit, because *A.* which was the *medius antecessor* or *medium differens*, is incapable. *Dyer, 274. Gray's Case.*

V. But in any Descents, the Impediment in an Ancestor that is not *medius antecessor*, from whom and to whom, will not impede the Descent.

As for instance, the Grandfather and Grand-mother both Aliens, or Attaint of Treason have Issue, the Father a *Denizen*, who hath Issue the Son a *Natural born Subject*, the Father *Courtney's Case. Com. Pleas Coron. fol. 141.*

ther purchases Lands, and dies, the Son shall be Heir to the Father, notwithstanding the Disability of the Grandfather, (and yet all the Blood which the Father hath is derived from his disabled Parents) for they are not *mediæ antecessores*, between the Father and the Son, but paramount.

The Law does not hinder, *but that an Alien is of the same Degree and Relation of Consanguinity, as natural born Subjects, or Denizens born,*

Crook Car.

8. 9.

Carion's Case.

the Son, the Father and Brother, tho' Aliens; the Son, Father and Brother, our Law takes Notice of, as well as natural born Subjects, and so it was adjudged, for he shall be preferred in *Administration*, though an Alien, *as next of kin.*

But in Cases of *Inheritance* the Law takes *no Notice of him*, and therefore as he shall not

29 Ed. 3. tit.

Coxenage 5.

take by Descent, so he shall not *impede* the Descent to the younger Brother: As for instance, *A.* an Alien, *B.* and *C.* naturalized by Act of Parliament, (Brothers) *B.* purchases Lands, and dies *sine prole*, *C.* shall inherit, and not *A.*

Ramsay's Case.

15 Car. 2. in

Com. Banc.

A. an Alien, *B.* and *C.* his Brothers, both naturalized by Act of Parliament, *B.* purchases Lands, and dies without Issue, the same shall not come to *A.* nor to his Issue, though a Denizen, but shall come to *C.* and his Issue; the Law taking *no Notice* of *A.* as to *impede* the Succession of *C.* or his Issue, though it work a *consequential Disability* to bar the Issue of *A.* parallel to what the Law calls *Corruption* of Blood, which is a Consequent of Attainder.

VI. Again, in Lineal Descents, if there be a Grandfather a natural born Subject, the Father an Alien, Son natural born Subject, the Father is made a Denizen, he shall not inherit

inherit the Grandfather; and if the Father dies in the Life of the Grandfather, the Grand-child, *though born after the Denization*, doth not remove neither the Personal nor Con-sequential Impediments or Incapacity of the Father.

In *Collateral Descents*, the Father a natural born Subject has Issue two Sons Aliens, who are both made Denizens, and dies without Issue, the other shall not inherit him.

Grodfrey and Dixon's Case. Godbolt, 275. Cro. Jac. 539. 2 Rolls Rep. 92. Vaughan 285. Lewin 59.

A. an Alien marries an *English Woman*, who is seized of Lands, and has Issue, the Father and Mother dies, yet the Issue may inherit the Mother, *non obstante* the Incapacity of the Father being an Alien.

VII. The Statute *de Natis ultra Mare*, declares the Issue born of an *English Man* upon an *English Woman* shall be a Denizen; yet the Construction has been, though an *English Merchant* marry a *Foreigner*, and has Issue by her born beyond the Seas, *that Issue is a natural born Subject*.

De Natis ultra Mare, 25 Ed. 3. Cro. Car. 601.

But if an *English Woman* go beyond the Sea, and there marry an Alien, and have Issue beyond the Sea, that Issue are Aliens.

Cro. Car. 601. Bacon's Case.

If an *English Woman* marries an Alien beyond the Seas, and then comes into *England*, and has Issue, they are not Aliens, but may inherit.

Prowde's Case of Kent.

VIII. My Lord Coke, in his *Commentaries* on *Littleton*, seems to be of Opinion, that if an Alien has Issue two Sons born in *England*, one dying without Issue, the other shall not inherit him. But the Law is otherwise taken at this Day, as I conceive the Reasons that have been given, are,

Co. Lit. 8. 1 Lev. 69. 1 Sid. 198. 1 Ven. 429. Hard. 224.

1. Though the Descent from one Brother to another Brother be a *collateral Descent*, yet

Per L. C. J. Hale in Ramsey's Case.

it

it is an *immediate Descent*, and consequently if no Disability or Impediment can be found in them, no Impediment in another Ancestor will hinder the Descent between them.

That this is an immediate Descent, appears,

First, In Point of Pleading, one Brother shall derive himself as Heir to another, without mentioning any other Ancestor.

Secondly, According to the Computation or Degrees, Brother and Brother make but one Degree, and the Brother is distant from his Brother or Sister in the *first Degree of Consanguinity*, and no more, by the Laws of England.

* *Just. l. 9. tit. de gradibus consanguinitatis* 38.

According to the *Civil Law* * Brother and Brother make but one Degree, for the Brother is in the *second Degree* from the Brother, yet both make but one Degree.

† *Decret. Gratiani, cap. 35. quest. 5.*

According to the *Canon Law*, † *Frater & Frater, or Frater & Soror sunt in primo gradu.*

And therefore the Laws prohibiting Marriage between Kindred in the *fourth Degree*, take Brother and Sister to be the *first Degree* of the four.

Lit. Sect. 20. 31 Ed. 3. Gard. 116. Holland's Case cited by Littleton.

The Laws of England, in Computation of the Degrees of Consanguinity, agree with the *Canon Law*, and reckon the Brother and Brother to be the *first Degree*.

|| *Serpian in Comptes, degrees in Line Collat. Solenk, &c.*

Herewith agree the Customs of *Normandy*, || which, though in some Cases differ from the Laws of England, yet herein, and in divers other Particulars touching Descents, they agree.

Brown's Case, Mich. 1656. B. R. contra, E. 6. Bro. Administration 47.

Another Evidence to prove, that the Descent between Brothers is immediate, is this, (*viz.*) the Descent between Brothers differs from all other collateral Descents whatsoever, for

for in other Descents collateral *the half Blood* which prefers *does inherit*, but in a Descent between Brothers *the half Blood does impede the Descent*, the Brother of the half Blood before the Mother. which argues, that the Descent is immediate.

The Uncle of the Part of the Father has no more of the Blood of the Mother, than the Brother by the second Venter, the Brother by the second Venter has the immediate Blood of the Father with the Uncle (*viz.* the Father's Brother) has not but only as they meet in the Grandfather; the Brother of the half Blood is nearer of Blood than the Uncle, and therefore shall be preferred in *Administration*.

It is apparent, that if in the Line between Brother and Brother, the Law takes Notice how the Father was the *Medium* thereof, the Brother of the second Venter should rather succeed to the other Brother, because he is Heir to the Father; therefore in a Descent between Brothers, the Law respects only the *immediate Relation of the Brothers as Brothers*, and not in respect of the Father, though it is true, the Foundation of their Consanguinity is in their Father or Mother.

Again, if the Father, in case of a Descent between Brothers, were such an Ancestor as the Law looked upon as the *Medium* that derives the Descent from the one Brother to the other, then the Attainder of the Father would hinder the Descent between the Brothers: But the Attainder of the Father does not hinder the Descent between the Brothers; the Reason is, because *the Father is not such a Medium or Nexus* that is looked upon by the Law, as the Means deriving such a Descent between the two Brothers: As for instance of three Cases, two whereof evince the first Proposition, (*viz.*)

Inst. 8. 2.

That

That although the Descent from one Brother to another Brother, though it be a collateral Descent, yet is an immediate Descent, *and that if no Disability or Impediment arises in them*, no Impediment in another Ancestor will hinder them.

*Dyer, 247.
Gray's Case.*

The younger Brother has Issue, and is attainted of Treason, and dies, the elder Brother has Title to a *Petition of Right*; dies *sans* Issue without a Restitution, the younger Brother's Son has lost that Title; for though the Title were in the Ancestor that was not attainted, yet his Father that is the *Medium*, whereby he must convey that Title was attainted, and so the Descent was obstructed.

*Com. placit.
Coron. fol.
241.
Henry Courtney's Case.*

Henry Courtney had Issue *Edward*, and was attainted of Treason, and died, *Edward* purchased Lands, and died without Issue, the Sisters and Heirs of *Henry* were disabled to inherit *Edward*, yet neither *Edward* nor his Aunts were attainted, or their Blood corrupted; yet because *Henry* was the *Medium through whom* the Aunts must derive their Pedigree and Consanguinity to *Edward*, who was attainted, the Descent was obstructed till a Restitution in Blood.

But if the Grandfather of *Edward* had been attainted, and not *Henry*, this would not have hindered the Descent from *Edward* to the Aunts, because that *Attainder had been paramount* to that Consanguinity which was between *Henry* and his Sister, and that is proved by this third Case.

*Mich. 40, 41.
Eliz. ruled in
the Exchequer
in the Case of
Hobby.*

William Hobby had Issue *Philip* and *Mary*, and was attainted of Treason, and died, *Philip* purchases Lands, and died without Issue; it was adjudged in that Case, that *non obstante* the Attainder of *William Hobby*, *Mary* should

Should inherit, because the Descent and Pedigree between *Philip* and *Mary* was immediate, and the *Law regards not the Disability of the Father.*

If the Heir of the Part of the Father be ^{49 E. 3. 12.} attaint, the Land shall escheat, and shall ^{per Tanks and} never descend to the Heir of the Part of the Mother; but if the Son purchase Lands, and has no Kindred of the Part of the Father, but an Alien, it shall descend to the Heirs of the Part of the Mother. ^{Percebay.}

IX. Those that are born *sub fide, legiantia, obedientia Domini Regis* are not Aliens; and therefore those that were born in *Gascogn, Normandy, Aquitain, Fournay, Callis, Guyan,* ^{7 Co. 21.} whilst they were under the Dominion of the ^{Cabbin's} Kings of *England*, were natural born Subjects, ^{Case.} and not Aliens.

Scotland is a Kingdom by Union, and therefore those that were born in *Scotland* under the Allegiance of the King, as of his Kingdom of *Scotland*, before the Crown ^{Vaughan,} came united, were Aliens born, and such ^{268. Craw} Plea against such Persons was a good Plea; ^{versus Ramsey,} but those that were born since the Crown of ^{2 Keb. 601.} *England* descended to King *James* are not Aliens, for they were born *sub fide & legiantia Domini Regis*; so those that are born at this Day in *Virginia, New-England, Barbadoes,* ^{Sir John Bur-} *Jamaica*, or any other of his Majesty's Plan- ^{rough's Sove-} tations and Dominions, are natural born Sub- ^{reignty of the} jects, and not Aliens; so likewise those that are born upon the King of *England's* Seas are not Aliens. ^{Seas, fol. 102.}

X. But if an Alien be made an Abbot, ^{Co. Lit. 129. b.} Prior, Bishop, or Dean, by the Plea of an Alien, we shall not disable him to bring any real or mixed Action concerning the Possessions

sions that he holds in his politick Capacity, because the same is brought in autre droit.

Dy. 2. pl. 8.
Lutw. 35.
Salk. 46.

The like Law is for an Executor or Administrator, because the Recovery is to another's Use; 3 *Grō.* 683. yet see the same *Book* 142. pl. 7.

1. Brownlow
42.

If an Action is brought against an Alien, and there is a Verdict and Judgment against him, yet he may bring a Writ of Error and be Plaintiff there, and that such Plea is not good in that Case.

Goldsbrough,
fol. 29.
Mich. 30 *Elix.*
Coke 5, Page's
Case.

Though an Alien may purchase, and take that which he cannot keep or retain, yet the Law hath provided a mean of Inquiry, before he can be divested of the same, for until some Office be found, the Freehold is in him.

Moor 4.
Walton ver.
Masbum.
Dyer 282.
Alien Staun-
ford's pl.
Crown.
Regis. art. 18.
fol. 53. tit.
King Seiffin,
&c.

And this Office, which is to gain to the King a Fee or Freehold, must be under the Great Seal of England, for a Commission under the *Exchequer-Seal* is not sufficient to entitle the King to the Lands of an Alien born; for the Commission is that which gives a Title to the King, for before that the King hath no Title; but in Cases of *Treason*, there upon Attainder the Lands are in the King without Office; and in that Case, to inform the Court a Commission may go out under the *Exchequer-Seal*.

An Alien cannot purchase Lands for his own Benefit; but he may for that of the Crown. *Lucas's Reports* 91. 94. 120. 122. 136.

Therefore if Land be devised to an Alien, the Crown shall have it, *ibid.* 94. Yet if an Alien, Tenant in Tail, suffers a common Recovery before Office found, the Recovery is good, *ibid.* 124.

3 *Cro.* 123.
Plowd. Com.
477.

XI. If an Alien and a Subject born purchase Lands to them and to their Heirs, they are

are joint Tenants, and shall join in Affize, and the Survivor shall hold Place till Office found. ^{17 E. 3. fol. 10 Hen. Hill's Case.}

By the finding of this Office the Party is out of Possession, if the same be of Houses or Lands, or such Things as do lie in Livery; but of Rents, Common, Advowsons, and other Inheritances incorporeal which lie in Grant, the Alien is not out of Possession (be they appendant or in gross) therefore if an Information or an Action be brought for the same, the Party may traverse the Office in that Court, where the Action or Information is brought for the King.

And if the King obtains not the Possession within the Year after the Office found, he cannot seize * without a *Scire facias*.

It is not for the Honour of the King (an Alien purchasing of a Copy-hold) to seize the same, for that the same is a base Tenure; and so it was adjudged, † where a Copy-hold was surrendered to J. S. in Trust, that one *Holland* an Alien should take the Profits thereof to his own Use and Benefit; upon an Inquisition taken, it was adjudged the same was void and should be quashed, because the King cannot be intitled to the Copy-hold Lands of an Alien, nor to the Use of Copy-hold Lands, as the principal Case was.

XII. An Alien Infant, under the Age of ^{13 & 14 Car. 2} 1 Years, cannot be a Merchant Trader within this Realm, nor can he enter any Goods in his own Name at the Custom-house. ^{2. c. 11. §. 10.}

If an *English* Man shall go beyond the Seas, ^{14, 15 H. 8.} and shall there become a sworn Subject to any Foreign Prince or State, he shall be looked upon in the Nature of an Alien, and shall pay such Imposition, as Aliens; if he comes and

* 29 Affize 30.
31, 32. Affize
Travers 32.
vouched in
Staunford pl.
fol. 54. cap. 18.
† Styles 20.

and lives in *England* again, he shall be restored to his Liberties.

1 *Ro.* 144.

3 *Bulst.* 9.

An Alien is robbed; and then he makes his Executor, and dies, and afterward the Goods are waft, the Lord of the Franchise shall not have them, but the Executors.

Vide 13 *E.* 4.

1 *Bulst.* 134.

Yelverton 198.

Turlotte verf.

Monson 8 *Jac.*

B. R.

Moore, 431.

But yet Aliens

and Denizens

are restrained by the Statute of 5 *Eliz.* to use any Trade, not having served seven Years as Apprentices within the Realm. *Trin.* 12 *Car.* 1. at *Serjeant's-Inn* in *Fleet-street*, by all the Judges. *Hutton's Reports*, fol. 132. but *quere* that Resolution. See the Trades in Stat. 5 *Eliz.* alphabetically digested with Observations, in P. 170, of Laws concerning Masters and Servants. *Foff. Cr. Law*, 186. S. P.

Lord Ray-

mond 282.

An Alien Enemy commorant here by the King's Licence, and under his Protection, may maintain Debt upon Bond, although he came not with safe Conduct.

Where an Alien should take by Course of Descent, there the Estate shall go over to him, to whom it would have gone in case the Alien had been already dead; as, where Tenant in Tail has Issue two Sons, and the eldest is an Alien, the younger Brother shall inherit. *Lucas* 116. Yet if an Alien be Tenant in Tail, Remainder to a natural born Subject, the Remainder-man cannot come in until the Estate Tail be spent. 10 *Mod.* 120.

C H A P. III.

Of Naturalization and Denization.

- I. *Whether the Kings of England can naturalize without Act of Parliament.*
- II. *What Operation Naturalization hath in reference to remove the Disability arising from themselves.*
- III. *What Operation Naturalization hath in reference to remove Defects arising from a lineal or collateral Ancestor.*
- IV. *Where Persons born out of the Realm may inherit by the Laws of England.*
- V. *A Kingdom conquered, and united to the Crown of England, whether by granting them a Power to make Laws can implicitly create in them such a Sovereignty, as to impose on the Realm of England.*
- VI. *Of Persons naturalized by a Kingdom dependent, whether capable of imposing on one that is absolute.*
- VII. *Of Kingdoms obtained by Conquest, how the Empire of the same is acquired, and how the Conqueror succeeds.*
- VIII. *Ireland, what Condition it was accounted before the Conquest in reference to the Natives of the same, and whether by making it a Kingdom, they can create a Foreigner as a natural born Subject of England.*
- IX. *Of Aliens, in reference to the Transmission of their Goods and Chattels by the Laws of France.*
- X. *Of the Privileges the Kings of England, of old, claimed in the Estates of Jews dying commorant here, and how the same at this Day stands.*
- XI. *Of Persons born in Places annexed or claimed by the Crown of England, how esteemed by the Laws of the same.*
- XII. *Of Denization, and what Operation it hath according to the Laws of England.*
- XIII. *Where an Alien is capable of Dower by the Laws of England, and where not, and of the total Incapacity of a Jew.*

37 *Denizen is capable of the Creation of Honour, by the Laws of England.*

THE Father and Mother are the Fountain of the Blood natural, and as it is that that makes their Issue, Sons or Daughters, so it is that that makes them Brothers and Sisters; but it is the civil Qualifications of the Blood that makes them inheritable one to the other, and capable of enjoying the Immunities and Privileges of the Kingdom; but that is from another Fountain, *viz.* the Law of the Land, which, finding them legitimate, doth transplant them into the Civil Rights of the Land, by an Act called Naturalization; which does superinduce and cloath that natural Consanguinity with a Civil hereditary Quality, whereby they are enabled not only to inherit each other, but also to enjoy all the Immunities and Privileges that mere natural born Subjects may or can challenge.

Strw. lib. 2. cap. 12. II. According to the Laws of *Normandy* the Prince might *naturalize*; but such *Naturalization* could not divest the Descent already vested.

1 Inst. 129. a. But according to *our Law* by no way but by *Act of Parliament*, and that cures the Defect as if they had been born in *England*, and no Man shall be received against an *Act of Parliament* to say the contrary.

Therefore if the Father an *Alien* has Issue a Son born *here*, and then the Son is naturalized, the Son shall inherit.

Co. Lit. 129. If the Father, a *natural born* Subject, has Issue an *Alien* who is *naturalized*, the Father dies, the Son shall inherit.

III. *Naturalization* does remove all that *Disability* and *Incapacity*, which is in Aliens in respect of themselves, and so puts them intirely in the Condition as if they had been *born in England*.

The *Relative Terms*, as if *born in England*, is generally used to supply the *personal Defect* of the Parties naturalized, arising from their *Birth out of England*, and therefore shall never be carried to a *collateral Purpose*, nor cures a Disease of *another Nature*, as *half Blood*, *Illegitimation*, and the like; but all Diseases, whether in the *Parties* themselves, or resulting from the Ancestor, it cures.

Acts of Parliament of this Nature may be so penned, as to cure Defects in the *Father* or *Ancestor*, or in the Parties *themselves*.

If *Restitution in Blood* be granted to the *Son* by *Act of Parliament*, this cures that *Disability* that resulted from the *Father's Attainder*, and that not only to the *Son*, but also to the *collateral Heirs* of the *Father*; the true Reason of this is, because *the Corruption of the Blood by the Attainder is only of the Blood of the Father, for the Son's Blood or collateral Heir was not at all corrupted*; for the Scope of the *Act* taking notice of the *Father's Attainder*, does *intentionally* provide against, and remove it, for otherwise the same had been useless.

But in *Naturalization*, without express Words, it takes no notice of the Defects in the *Father* or other Ancestor, nor removes them.

And therefore such *Acts of Parliament* as take no other notice but of the *Person naturalized's Foreign Birth*, the same cures not any *Disability of Transmission hereditary* between

the Father, Brother, or any other Ancestor, *resulting* from the Disability of them without *actually naming of them*; as for instance, the Father an Alien, the Son naturalized by Act of Parliament, the Father or any other Ancestor an Alien purchases Lands and dies, the Son shall not take by reason of the Disability in the Father, but there *may be Wards* inserted in the Act that may take away the Impediment,

King's Natural born Subjects shall inherit as Heirs to any Honours, Manors, &c. tho' their Parents were born out of the King's Dominions. None to inherit by the recited Act, but such as shall be in being, at the Death of the Ancestor who shall die seised.

By Stat. 11 and 12 W. 3. c. 6. All Persons, being the King's natural born Subjects, may inherit as Heirs, and make their Titles by Descent from any of their Ancestors lineal or collateral, altho' the Father and Mother, or other Ancestor of such Persons, through whom they derive their Title, be born out of the King's Allegiance.

By 25 Geo. 2. c. 39. *Seff.* 1. The 11 and 12 W. 3. c. 6. shall not extend to give any Right to any Person to inherit as Heir or Coheir to any Person dying seised of any Manors, Lands or Hereditaments, in Possession, Reversion, or Remainder, by enabling any such Person to derive his Pedigree through any Alien Ancestor, unless the Person so claiming or deriving his Title as Heir was in being, and capable to take the same Estate as Heir by virtue of the said Statute, at the Death of the Person who shall so last die seised, and to whom he shall so claim to be Heir by the said Statute.

If the Descent shall be cast upon a Daughter, and the Alien Father, &c. shall afterwards have a

By *Seff.* 2. Provided that in case the Person who shall be in being, and capable to take at the Death of the Ancestor so dying seised, and upon whom the Descent shall be cast by virtue of this, or of the said Act, shall be Daughter of an Alien; and the Alien Father or

or Mother, through whom such Descent shall be derived, shall afterwards have a Son born within any of his Majesty's Dominions, the Descent so cast upon such Daughter shall be divested in favour of such Son; and such Son shall inherit and take the Estate as is allowed by the Common Law of this Realm, in cases of the Birth of a nearer Heir; or in case of such Father or Mother shall have no Son, but shall have one or more Daughters afterwards born within any of his Majesty's Dominions, the Daughters, so born afterwards, shall inherit and take in Coparcenary with the Daughter, upon whom the Descent shall be at the Death of the Ancestor last seised.

Son, the Daughter to be divested, and where no Son, the Daughters afterwards born in his Majesty's Dominions, shall jointly inherit.

IV. There are four ways, by which Men born out of *England*, may inherit in *England*, besides by the Statute of *Edward the Third*, *De Natis ultra mare*.

1. If they be born in any Dominion of the King's when he is actually King of *England*.

2. If they be made inheritable by Act of Parliament in *England*.

3. If they be born Subjects to a Prince, *Calvin's Case*, holding his Kingdom or Territories as Homager and Leigeman to the King of *England* during the Time of his being Homager: So the *Welch* were inheritable in *England* before 12 Ed. 1. though Subjects to the Princes of *Wales*, who were Homagers to the King of *England*. So were the *Scotch* in *Edward the First's* Time; but when once the Homage determines, then they become Aliens, otherwise Subjects, and upon that Reason *Magdulpb*, a *Scot*, appealed * from the Judgment of his Prince to *Edward the First*, *ut Superiori Domino Scotiæ*; but then it must be understood where such Prince is Homager *subjectionis*, and

4 Co. 21. b.

* *Placit. Parl.*
21 Ed. 1. fol.
152, 157.

not only *infeodationis*, for another King may hold of the King of *England* an Island or other Territory by Tenure, and not be his Subject.

4. If the King of *England* enters in a hostile manner the Territories of another Prince or State, and any be born within any of the Places or Guards possessed by the King's Army, they are looked upon in Law to be within his Protection, and such Person born is a natural born Subject of *England*; but then he must be of Parents Subjects †, not hostile; and therefore a Bastard born in *Tangier* is capable of purchasing Land in *England*, if his Parents were Subjects.

† *5 Eliz. Dyer*,
fol. 224.
placit. 29.
Crow vers.
Ramsay,
Vangban, 301.
2 Keb. 601.

V. Those that are born in *Ireland*, and those that are born in *Scotland*, are all alike; for their Births are within the King's Dominions, and they are born under the like Subjection and Obedience to the King, and have the like Band of Allegiance *ad fidem Regis*; yet if a *Spaniard* comes into *Ireland*, and by the *Parliament* is there naturalized, though perhaps this may qualify and cloath him with the Title of a natural born Subject of *Ireland*, yet it has been conceived, that it will not make him a natural born Subject of *England*.

For the Union of *Ireland* to that of *England*, is different from that of *Scotland*; for so conceives, the first is dependent as a Kingdom conquered, the latter independent. Though *Henry the Second*, after his Conquest of that Nation, did remit over from *England* the ancient *modus tenendi Parliamentum*, enabling them to hold Parliaments, which after was confirmed by King *John*; yet that was by no other Force than bare Letters Patents. Now when a Nation is once conquered, there remains no Law, but that of the Conqueror; and

My Lord Coke
so conceives,
but Mr. Selden
denies that
ever there was
any such mo-
dus tenendi,
but the same
is an Impos-
sible. Vide his
Tit. of Hon-
our, fol. 708.
710, 718, to
721.

and though he may incorporate such conquered Nations with his own, and grant unto them their ancient Parliamentary Ways of making of Laws; yet the Conqueror can no ways grant unto them a Power, by virtue of such Grant or Confirmation, as to impose upon his own Country; for he himself, before such Conquest, could not make a natural born Subject without Act of Parliament, and most certainly his Conquest adds nothing to his Power, though it does increase his Dominion.

The Doctrine with respect to *Scotland* is intirely altered by the Union since our Author wrote.

VI. Again, Kingdoms that are absolute under one Prince, *ad fidem Regis*, there the Acts of each other are reciprocate, and one naturalized by the Parliament of *Scotland*, is as naturalized in *England*, because *Scotland* is a Kingdom absolute, and yet, in the Case of *Craw* and *Ramsay* *, it is there held, that an Alien naturalized in *Scotland* remains an Alien notwithstanding; but *Ireland* is a Kingdom dependent and subordinate to the Parliament of *England*, for the Parliament in *England* can make an Act to bind *Ireland*, but not *à converso*. Now to be a Native of *Ireland*, is the same as to be born in *Ireland*, but that is by the Laws of *Ireland*; but to be born in *Ireland*, and to be the same as to be born in *England*, must be by the Laws of *England*: But there is no Law that hath enabled them with such a Power, as to naturalize further than their own Laws extend; but the Law of *Ireland* does not extend into *England*, therefore Naturalization in *Ireland* operates only in *Ireland*, because of the Failure of Power.

VII. Again, Kingdoms that are conquered, the Empire of the same may be acquired by

Selden's Titles of Honour, fol. 213. in *Scotland*, the Title is *Carolus Scotiae, Angliae, Franciae, & Hiberniae Rex*; but in *Ireland*, *Anglia, Scotiae*.
Note, *Scotland* is not a Dominion belonging to the King of *England*.
* *Vaughan*, 301.

King at this Day cannot alien or sell Ireland without an Act of Parliament, for they whose Right he succeeds, could not do it,

4 *Instit.* 357. nor can he grant, *Portus Maris obedi-
entibus advocatio-
nibus & patro-
nationibus Ec-
clesiarum Me-
tropoliticarum
& Cathedralium
Cancellor.
Justiciar. nor
mero & mixto
Imperio*, and many more, all which are inseparably annexed to a Kingdom.

† *Imperium aliud est ob utilitatem ejus qui regitur, hoc inter liberos locum habet, illud inter dominos & servos, Arist. l. 7. de Republica.*

the Conqueror, only as it is in a King, or other Governor, and then the Conqueror only succeeds in his Right, and no further *; or also as 'tis in the People, in which Case the Conqueror hath Empire, so as that he may dispose of it, or alienate it, as the People themselves might; for 'tis one Thing to inquire of the Thing, another, of the Manner of the holding of it, the which are applicable not only to corporal Things, but incorporeal also: For as a Field is a thing possessed, so is a Passage, an Act, a Way; but these things some hold by a full Right of Property, others by a Right of Usufructuary, others by a temporary Right. Again, by the Will of the Conqueror, the Kingdom or Republiek that is so conquered, may cease to be a Kingdom or Commonwealth, either so that it may be an Accession of another Kingdom or Commonwealth, as the *Roman* Provinces, or that it may no ways add hereto any Kingdom or Commonwealth, as if a King waging War at his own Charge, so conquer and subject a People to himself, that he will have them governed, not for the Profit of the People chiefly, but of the Governor, which is a Property of that we call *Herile Empire* †, not of Civil; for Government is either for the Profit of the Governor, or for the Utility of the Governed; this hath Place among Freemen; that among Masters and Servants. The People then that are kept under such Command, will be always for the future not a Commonwealth, but a great Family: Hence it is that we may plainly understand, what kind of Empire that is, which is mixed of Civil and Herile, that is, where Servitude is mixed and mingled with some personal Liberty:

erty: For if the People are deprived of Arms, commanded to have no Iron but for Agriculture, to change their Language and Course of Life, and abstain from the Use of many of their Customs, to be confined * to their own Houses, Castles, or Plantations, nor wander abroad; to be governed by such Laws as the Conqueror should transmit to them †, all which are the Tokens of a Nation by Conquest made subordinate to the Conqueror, and are part Herile, and part Civil; and though they may remain a Kingdom, and absolute within themselves as to the making of Laws, to oblige each other, yet they can no ways impose on their Conqueror; for though that be true, which in *Quintilian* is alledged on the Behalf of the *Thebans*, that that only is the Conqueror's which he holds himself; but an incorporeal Right cannot be holden, and the Condition of an Heir and of a Conqueror is different, because the Right passeth to the former by the Descent, but only the Thing to the last by virtue of the Conquest. But certainly that is no Objection, for he that is Master of the Persons, is also Master of the Things, and of all Right which does belong to the Persons; for he that is possessed ||, doth not possess for himself, nor hath he any thing in his Power who hath not himself; and so it is if he leaves the Right of a Kingdom to a conquered People, he may take to himself some things which were the Kingdom's, for it is at his Pleasure to appoint what Measure he will to his own Favour: From hence it is we may observe what sort of Empire that Kingdom is at this Day.

VIII. Now *Ireland*, before the same became united to the Crown by the Conquest of

Case of the Earl of *Shrewsbury* on the Stat. of 28 H. 8. of Absentees, 4 Inst. pre-scribes, fol 354. † Or else they came to London for them, Cl. 18 H. 3. m. 17. *Ariovistus apud Casarem, jus esse belli ait, ut qui vicissent, iis quos vicissent quemadmodum vellet impararent. de bello Gallico, l. 1.*

|| *Leg. qui in servitute est, de reg. Juris Leg. si eventus D. ad. Leg. Jud. de Adul.*

Calvin's Case.
7. Co. 23.

of *Henry the Second*, the Natives were mere Aliens, and out of the Protection of the Laws of this Realm; yet when once they became a conquered People, and subject to the Crown of *England*, and united *ad fidem Regis*, then did arise their Allegiance; but that *Union* neither made them capable of the Laws of *England*, nor of their own, till such time as the Conqueror had so declared them: Now what do they desire in order to revive their Government? First, they humbly beg of King *Henry the Second*, that since he was pleased that they should remain as a distinct Dominion, *that their ancient Customs or Usages should not continue; that he would be pleased to*

* For at a general Council at *Cassels* of all the Clergy there, Anno 1170. Ecclesiastical Laws of *England* were established, and made of Force in *Ireland*, *Gerardus Cambrensis Topographia Hibernia*, lib. 3. cap. 18. Pat. 8 E. 1. m. 13. *Hibern. † Matthew Paris Hist. Angl.* p. 121.

ordain, that such Laws as he had in England should be of Force, and observed in Ireland; pursuant to which he grants them power to hold Assemblies by the three Estates of the Realm, and that they should be regulated according to the Institution and manner of the Parliaments in England, should have the Benefit of Magna Charta, and other the great Laws of England †, and by such Means put them into a Method of governing themselves according to the known Ways of England, and to make such Laws as should bind among themselves; and by following the Example of those of England ‖, their Judgment might be supervised, and corrected according to the Justice and Laws of England, by Writs of Error, Appeal and the like.

Leges Angliæ ab omnibus suis gratè acceptæ. ‖ 7 Coke 23. Ryly's Placita Parliam. 198. to 208.

Now here is no continuing or reviving their ancient Government, but the introducing a new one, part Civil, and part Herile; nor indeed

indeed had they before any such thing as a Parliament there, or general Assembly of the three Estates; for when *Henry* the Second went over, there were several Kings or Scepts, who had their several and distinct Assemblies; but when they submitted, this great Assembly of Estates which he constituted, was a Collection out of all of them, for their future well Government; so that whatsoever *modus* of Regimen the Conqueror declared, it was no more than for the well governing of the Place, and making such Laws as were necessary, and proper amongst themselves: But for them to impose, by virtue of an Act of Naturalization, upon an absolute Kingdom as *England*, without the Consent of the three Estates of the same, surely was never intended, much less effected: The Case is both great, dubious, and curious, therefore *quære*.

Sir John Davies on the Conquest of Ireland, 103. 104, 105.

Vaugban 301. *Craw versus Ramsay*. 2 *Keb.* 601.

IX. By the Laws of *France*, all Persons not born under the Legiance of that King are accounted Aliens, and if they die, the King is intitled to their Estates; for all shall be seized into his *Exchequer*, or *Finances*; but if they make a Will, the Prerogative is disappointed: Yet that extends only to Chattels personal, in which Strangers passing through the same, have greater Immunities than Aliens there resident; for Travellers dying without Will, the Heirs or Executors shall have Benefit and Possession of their Estates.

X. The like Privilege the Kings of *England* formerly claimed in the Goods and Estates of the *Jews* after their Death, if the Heir sued not, and paid a Fine to the King to enjoy them, as by this Record appears.

Juratores super sacrum suum dicunt quod prædictum Messuagium fuit quondam Eliæ le Bland, qui, &c. diem clausit extremum, et quia mos est Judaismi quod Dominus Rex omnia bona Catalla Judei mortui de jure dare poterit cui voluerit, nisi propinquior hæres ejusdem Judei finem fecerit pro eisdem; dicant quod Dominus Rex dictum Messuagium dare poterit cui voluerit sine injuria alicui facienda, si ita sit quod hæres dicti Eliæ, finem non fecerit pro Catallis ejusdem Eliæ habendis, &c.

Escheat An.
52. H. 3.
Num. 31.

Caroon's Case. But whether the same is now used, may seem
Hobby's Case. doubtful; for the Goods of Aliens escheat not
Stephen's Case. at this Day to the Crown, but Administration shall be committed to the next of kin.

XI. By the Laws of *France, Flanders, Milan, Savoy, and the Frenche Compte*, though possessed by several other Princes, yet the Natives of the same partake in the Immunities with the natural born Subjects of *France*, and if they die without Will, their Heirs claim their Estates; the Reason given, because, say they, those Countries were never alienated from them, but were always annexed to the Crown of *France*, who acknowledges them to be his Subjects to this Day.

But in *England* it is otherwise, for those that are born in *Gascoin, Normandy, Aquitain*, and those other Territories which were formerly the Possessions of the Crown of *England*, in which, if any had been born when subject to the same, they would have been natural born Subjects, yet now are esteemed Aliens; and so was the Case vouched by *Shard*, of a *Norman*, who had robbed, together with other *English*, divers of his Majesty's Subjects in the narrow Seas, being taken and arraigned, the *Norman* was found guilty only of Felony, and

Note, This was before the Statute of 25 E. 3. it's vouched by *Shard* in 40. Affize, pl. 24 See *Calvin's Case*, 7 Co. 21.

and the rest of Treason; for that *Normandy* being lost by King *Jahn*, was out of the Allegiance of *Ed. III.* and the *Norman* was accounted as an Alien.

By Stat. 7 *Ann. c. 5. Sect. 3.* The Children of natural born Subjects, born out of the Ligeance of her Majesty, shall be deemed natural born Subjects. Children of natural born Subjects born abroad, to be deemed natural born Subjects.

By Stat. 4 *Geo. 2. c. 21. Sect. 1.* Children born out of the Allegiance of the Crown of *Great-Britain*, whose Fathers shall be natural born Subjects, shall by Virtue of the Act 7 *Ann. c. 5.* and of this Act, be natural born Subjects. Children of natural born Subjects born out of the Allegiance of the Crown, declared to be natural born.

By Stat. 5 *Geo. c. 27. Sect. 3.* If any of the King's Subjects, being Artificers, shall go into any Country out of his Majesty's Dominions, to exercise or teach any Trades to Foreigners; and if any of the King's Subjects, in any such Foreign Country, exercising any Trades, shall not return into this Realm within six Months after Warning given by the Ambassador, Minister, or Consul, of *Great-Britain*, in the Country where such Artificers shall be, or by any Person authorized by such Ambassador, &c. or by one of the Secretaries of State, and from thenceforth inhabit within this Realm; such Person shall be incapable of taking any Legacy, or of being an Executor or Administrator, and of taking any Lands, &c. within this Kingdom, by Descent, Devise, or Purchase, and shall forfeit all Lands, Goods, &c. within this Kingdom, to His Majesty's Use, and shall be deemed Alien, and out of His Majesty's Protection. After May 1, 1719, any Artificer going into a foreign Country, there to exercise his Trade, and not returning in six Months after warning given by the Ambassador, &c. shall be incapable of taking any Legacy, &c. Forfeit all his Lands, &c. and be deemed an Alien.

XII. In *France* the Kings may there Denizee, so likewise here in *England*, but with this

Com. Rep.
687.

this Difference, the Letters of Denization by those of *France* remove the total Disability and Incapacity of the Alien :

Vide 1 Inst.
129. a. The
Difference
between Na-
turalization
and Deniza-
tion.

But in *England* the Charter of Donation or Denization is but a temporary, partial, and imperfect *Amotion* of the Disability of an Alien ; for though it puts the Person indenized, as to some Purposes, in the Condition of a Subject, and enables a *Transmission* hereditary to his Children, born after the Denization, yet it does not *wholly* remove the *Disease* or *Nonability*, as to the Points of *Descent* or *hereditary Transmission*, and resembles a Person in case of an *Attainder*, and therefore if he purchases Lands and dies without Issue, the Lord by Escheat shall have the Lands.

1 *Inst.* 2.

And therefore in lineal Descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural born Subject, the Father is made Denizen, he shall not inherit the Grandfather ; and if the Father dies in the Life of the Grandfather, the Grand-child (though born after the Denization) shall not inherit the Grandfather, for the Denization does not remove, neither the personal, nor the consequential Impediment or Incapacity of the Father.

Godfrey and
Dixon's Case.
Godbolt. 175.
Dyer 44.
1 *Inst.* 31. b.

So likewise in collateral Descents ; as for Instance, the Father a natural born Subject, had Issue two Sons Aliens, who are both made Denizens, and one dies, the other shall not inherit him.

XIII. The like Law in Dower, a Man seized of Lands in Fee, takes an Alien to Wife, and then dies, the Wife shall not be endowed : But if the King takes an Alien to Wife, and dies, his Widow Queen shall be endowed by the Law of the Crown. *Edmund,*
Brother

Brother of King *Edward* the First, married 26 *Ed. 1. Rot.* the Queen of *Navarre*, and died, and it was *part 1.* resolved by all the Judges, that she should be endowed of the third Part of all the Lands whereof her Husband was seized in Fee.

A Jew born in *England*, takes to Wife a 1 *Inst. 31. b.* Jew born also in *England*, the Husband is 32. a. converted to the Christian Faith, purchases Lands, and enfeoffeth another, and dieth; the Wife brought a Writ of Dower, and was barred of her Dower. *Quia vero contra jus-* *Claus. H. 3.*
titiam est quod ipsa dotem petat, vel habeat de *Mem. 17.*
tenemento quod fuit viri sui ex quo in conver- *Dors.*
sione sua noluit ei adherere, & cum eo convertere.

XIV. If an Alien be a Disseissor, and ob- *C. 1 Inst. fol.*
 tains Letters of Denization, and then the 278. B.
 Disseissor release unto him, the King shall not have the Land; for the Release hath altered the Estate, and it is as it were a new Purchase; otherwise it is, if the Alien had been Feoffee of the Disseissee.

And though Aliens are enabled by Charter of Denization to a Transmision hereditary to their Posterity of Lands, yet a Denizen is not capable of *Honour*, nor to a Transmision of the same, without *Naturalization by Parliament*; for by the Charter of Denization he 4 *Inst. fol. 4.*
 is made, *quasi, seu tanquam ligeus*; but to be *Vide infra.*
 a Member of Parliament, he must be *ligeus revera, & non quasi*, for by his becoming a Nobleman, he claims the Place of Judicature in Parliament, the which he cannot till naturalized by Act of Parliament, and then he may claim as eligible to the same, or any other: And the same Law is at this Day in Decreed in
France, where no Foreigner can hold any the grand
 Honour or Dignity in the State or any Part Estate of
 of the Government. 'Tis true, Cardinal *Ma-* *Paris, 1607.*
zarine,

zarine, who was an *Italian*, held a great Share in the same, but it was *vi, et manu forti*, and was the Occasion of introducing a Civil War in that Kingdom; and yet the late Duke of *Richmond* claimed the Honour or Dignity of a Peer of *France*, as Lord of *Aubigny*, but that was a Title rather annexed to the Tenure of that Seigniorship than otherwise.

V. de Montmouth Hist. of *France*, f. 15.

And though his Majesty King *Charles* the Second was pleased to confer the Dignity of Dutches of *Portsmouth* on the Lady *Querouaille*, yet the same was rather Honorary, than a Title consistent with the Laws of *England*: For though his Majesty is the Fountain of Honour, and may call the meanest of his Subjects to the highest of Dignities, yet it is their Civil Qualifications which make them capable of enjoying the Immunities and Privileges of Peers; but that flows from another Fountain, even the Law of the Realm, which as to Denizens disable them to take so signal a Mark of Sovereignty without Act of Parliament.

By Stat. 12 and 13 *W. 3. c. 2. Sect. 9.* From the Time that the further Limitation by this Act shall take Effect, no Person born out of the Kingdoms of *England*, *Scotland*, or *Ireland*, or the Dominions thereunto belonging, altho' he be naturalized or made a Denizen (except such as are born of *English* Parents) shall be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any Office or Place of Trust, either Civil or Military, or to have any Grant of Lands, Tenements or Hereditaments from the Crown to himself, or to any other in Trust for him.

Natura-

Naturalization cannot be performed but by Act of Parliament; for by this an Alien is put in exactly the same State as if he had been born in the King's Ligeance; except only that he is incapable, as well as a Denizen, of being a Member of the Privy Council or Parliament, &c. (1) No Bill for Naturalization can be received in either House of Parliament, without such disabling Clause in it (2). Neither can any Person be naturalized or restored in Blood, unless he hath received the Sacrament of the Lord's Supper within one Month before the bringing in of the Bill; and unless he also takes the Oaths of Allegiance and Supremacy in the Presence of the Parliament (3). *Black Com.* 374.

These are the principal Distinctions between Aliens, Denizens, and Natives; Distinctions, which Endeavours have been frequently used since the Commencement of this Century, to lay almost totally aside, by one general Naturalization Act for all foreign Protestants. An Attempt which was once carried into Execution by the Statute 7 *Ann. c. 5.* but this, after three Years Experience of it, was repealed by the Statute 10 *Ann. c. 5.* except one Clause, which was just now mentioned, for naturalizing the Children of *English* Parents abroad. However, every foreign Seaman, who in Time of War serves two Years on board an *English* Ship, is *ipso facto* naturalized (4); and all foreign Protestants and Jews, upon their residing seven Years in any of the *American* Colonies, without being absent above two Months at a time, are upon taking the Oaths naturalized to all Intents

(1) Stat. 12 *W. 3. c. 2.*

(2) Stat. 1 *Geo. c. 4.*

(3) Stat. 7 *Jac. c. 2.*

(4) Stat. 13 *Geo. 2. c. 3.*

and Puposes, as if they had been born in this Kingdom (1), and therefore are admissable to all such Privileges, and no other, as Protestants or Jews (2) born in this Kingdom, are intitled to. What those Privileges are, was the Subject of very high Debates about the time of the famous Jew Bill (3); which enabled all *Jews* to prefer Bills of Naturalization in Parliament, without receiving the Sacrament, as ordained by Statute 7 *Jac.* 1. It is not my Intention to revive this Controversy again; for the Act lived only a few Months, and was then repealed (4); therefore Peace be now to its *Manes*. *Ibid.* 375.

(1) Stat. 13 *Geo.* 2. c. 7. 20 *Geo.* 2. c. 24. 2 *Geo.* 3. c. 25.

(2) A pretty accurate Account of the *Jews*, till their Banishment in 8 *Edw.* 1. may be found in Book III. c. 6. of this Work.

(3) Stat. 26 *Geo.* 2. c. 26. (4) Stat. 26 *Geo.* 2. c. 26.

CH A P. IV.

Of Aliens, and Trials, *per Medietatem*, where allowed, and where not.

- I. *Of the manner of Aliens obtaining Trials per Medietatem, at the Common Law, and of the Antiquity of the same.*
- II. *Of the making the same a Law universal within this Realm, as to some Persons, afterwards general, as to all.*
- III. *Of the Writ, and some Observations on the Summons of such an Inquest.*
- IV. *Of the Opportunity lost or gained by praying this Immunity.*
- V. *Of the awarding of Tales upon Request on such Enquiries.*

VI. *Where*

VI. *Where this Immunity does not extend to Aliens, and where it does in Matters Civil and Criminal.*

VII. *Of the Validity of a Witness Alien, and of an Infidel.*

VIII. *The Title of a Renegado.*

IX. *Of the Benefit of the King's Pardon, whether it extends to an Alien, whose Abode is here, but happens to be absent at the Time of the promulgating.*

I. **T**R I A T I O *bilinguis, or per medietatem lingue*, by the *Common Law* was wont to be obtained by *Grant* of the King, made to any Company of Strangers, as to the Society of *Lombards* or *Almaignes*, or to any other *Corporation* or *Company*; when any of them were impleaded, the *Moiety* of the Inquest should be of their own Tongue; this Trial *per medietatem* in *England* is of great Antiquity, for in some Cases Trials *per medietatem* was before the Conquest, *Viri duodecim Jure Consulti, Angliæ sex, Walliæ totidem, Anglis & Wallis jus dicunt*, and as the Commentator observes, it was called *Duodecim virile Judicium*. Stanf. Pl. Coron. lib. 3. cap. 7. Lamb. fol. 91. Co. 1. Inst. 155. b.

II. This Immunity afterwards being found commodious to us *Islanders*, became universal; for by the Statute of 27 E. 3. cap. 8. it was enacted, that in Pleas before the Major of the Staple, if both Parties were Strangers, the Trial should be by Strangers; but if one Party was a Stranger, and the other a Denizen, then the Trial should be *per medietatem Lingue*: But this Statute extended but to a narrow Compass, viz. only where both Parties were Merchants or Ministers of the Staple, and the Pleas before the Major of the Staple: But afterwards in the twenty-eighth Year of the same King's Reign it was enacted, "That all manner of Inquests, which was to be taken

or made amongst Aliens and Denizens, be they Merchants or others, as well before the Major of the Staple, as before any other Justices or Ministers;" although the King be Party, the one half of the Inquest or Proof shall be *Denizens*, the other half *Aliens*, if so many Aliens and Foreigners be in the Town or Place where such Inquest or Proof is to be taken, that be not Parties, nor with the Parties in Contract, in Plea, or other Quarrel, whereof such Inquest or Proof ought to be taken; and if there be not *so many* Aliens, then shall there be put in such Inquests or Proofs *as many* Aliens as shall be found in the same Town or Places, which be not thereto Parties, as aforesaid; and the Remnant of Denizens, which be good Men, and not suspicious to one Party or other.

But if it be
for Treason,
è contra: Vide
postea Num. 5.

By which *Statute* the same Custom or Immunity was made a Law Universal, although it be in the Case of the King, for the Alien shall have his Trial *per medietatem*.

Dyer 144.

It matters not whether the Moiety of Aliens be of the same Country, as the Alien Party to the Action is; for he may be a *Dutch Man*, and they *Spaniards, French, Walloons, &c.* because the Statute speaks generally of *Aliens*.

Cro. Eliz.
818. 841.
Bro. tit.
Trial.

III. The Form of the *Venire facias* in this Case, is *De Vicineto, &c. quorum una medietas sit de Indigenes, & altera medietas sit de alienigenis natis, &c.* And the Sheriff ought to return *twelve Aliens* and *twelve Denizens*, one by the other, with Addition which of them are Aliens, and so they are to be sworn; but if this Order be not observed, it is holden as a Misreturn.

It has been conceived of some, that it is not proper to call it a Trial *per medietatem Linguae*,

Lingua, because any Alien of any Tongue may serve; but that surely is no Objection, for People are distinguished by their Language, and *Medietas Lingua* is as much to say, half *English*, and half of any other *Tongue* or *Nation* whatsoever; nor matters it of what *suf-* Cro. El. 841.
ficiency the Jurors are, for the Form of the *Venire facias* shall not be altered, but the Clause of *quorum quilibet habeat 4. l. &c.* shall be in.

If *both Parties* are *Aliens*, then the Inquest shall be *all English*; for though the *English* 21 H. 6. 4. may be supposed to favour themselves more than *Strangers*, yet when both Parties are *Aliens*, it will be presumed they will favour both alike, without any *Difference*.

Where an Issue is joined between a Deni- 2 Ro. Abr.
zen and an Alien, and a *Venire facias* awarded 643.
per Medietatem Lingua; and the Sheriff re-
turns. 12 Denizens and 12 others for Aliens,
whereas in Truth there are not 12 Aliens nor
6 Aliens returned: In this Case it seems that
the Alien may challenge the Array, for other-
wise he hath no Remedy, if he shall be con-
cluded by the Sheriffs Return.

But if he doth not challenge, and so they Dy. 28. 1. in
are impanelled, &c. it is sufficient; yet if *Margine*.
eight Denizens and four Aliens are impanel-
led, it is ill, because it appears in this Case
that the Trial is not *per Medietatem*.

If a Writ of Inquiry of Damages be award- Cro. El. 293.
ed in an Action between a Denizen and an
Alien, the Inquest shall be all of *English*, and
not Part of *Aliens*, for it is out of the Statute.

IV. If an *Alien* is party, who slips his Op- Dyer 28. a.
portunity, and suffers a Trial by all *English*;
the Judgment is not *Erroneous*; for if he
will be so negligent as to slip that Advantage

which the Law gives him, it is his Fault ;

(a) Dy. 144.
pl. 60.

(a) for the Alien, if he will have the Benefit of that Law, must pray a *Venire facias per Medietatem Linguae*, at the Time of the awarding the *Venire facias* : But if a Neglect of that Opportunity happens, yet if he prays it after the awarding a general *Venire facias*, the same may be retrieved, so as it be before the *Venire* be returned and filed, for then he may have *Venire facias de novo*, or otherwise he

21 H. 7. 32.

(b) Pl. Coron.

15c. Dyer 357.

2 Ro. A. 643.

Cro. El. 562.

cannot, (b) nor can he afterwards challenge the *Array*, for this Cause, if it falls out the Juries are all *Denizens*, though *Stamford* seems to be of a contrary Opinion, for the Alien must pray it at his Peril, *Heyward* against

3 E. 4. 11, 12. *Lipson*.

V. If there be general *Venire facias*, the Defendant cannot pray a *decem Tales*, &c. *per Medietatem Linguae* upon this, because the

10 Co. 104. 2.

Tales ought to pursue the *Venire facias* : But if the *Venire facias* be *per Medietatem Linguae*, the *Tales* ought to be *per Medietatem Linguae*, as if five Aliens and five *Denizens* appear on the principal Jury, the Plaintiff may have a *Tales per Medietatem* ; but if the *Tales* be general *de circumstantibus*, it hath been held good enough, for there being no Exception taken by the Defendant upon the awarding thereof, it shall be intended well awarded.

Cro. El. 818.

841.

21 H. 4.

Stamford 154.

Hill. 36. Eliz.

Dr. Lopez's

Case by all

the Judges.

If an *Alien* that *lives* here under the Protection of the King of England, and Amity being between both Kings, commits *Treason*, he shall by Force of the Act of 1 and 2 *Philip* and *Mary*, be tried according to the due Course of the *Common Law*, and shall not in that Case be tried *per Medietatem Linguae*.

But

But in the Case of *Petit Treason, Murder, Dyer 144. Felony, &c.* if he prays his Trial *per medietatem Linguae*, the Court ought to grant it. *Case of Sherley* where the Point is fully handled,

Yet if an *Information* be exhibited against an *Alien*, and an *Englishman*, the Trial is not *per medietatem*, but according to the *Common Law.* *3 Instit. 27. Moore 557. Barre's Case.*

If an *Alien in League* bring an *Action* (if there be Cause) the Defendant may plead in *Abatement*; but if it be an *Alien Enemy* he may conclude in the *Action.* *Coliure Coke's Entries, tit. Alien 1. Stam. 160. B. 27 Ed. 3. c. 8. 28 Ed. 3. 13.*

In an *Action* for Words the Defendant pleaded not Guilty, and said he was an *Alien* born, and prayed Trial *per medietatem Linguae*, which was granted, and at the *Nisi prius* in *London*, but six *Englishmen* and five *Aliens* appeared, and the Plaintiff prayed a *Tales de Circumstantibus per medietatem Linguae*, and it was granted, so there wanted one *Alien*, and the Record was: *2 H. 5. 3. Dy. 28. a. in Margine.*

Ideo alius Alienigena de Circumstantibus per Vic. London, ad requisitionem infra nominati Julii Cæsaris, per mandatum Justiciariorum de novo opposito, cujus nomen pannello prædict. affilatur, secundum formam Statuti in hujusmodi casu nuper editi & provisi; qui quidem Jurator sic de novo appositus, viz. Christianus Dethick Alienigena exactus venit, ac in Juratam illam simul cum aliis Juratoribus prædict. prius impannellatis & juratis juratus fuit, &c. It was found for the Plaintiff, and afterwards moved in Arrest of Judgment, that no *Tales* was to be granted *de Circumstantibus*, when the Trial is *per medietatem Linguae*, by the Justices of *Nisi prius*, by the Act of 35 H. 8. because in *Mich. 35, 36. the Act* it is spoken of Freehold of Jurors, *Eliz. in B. R. Sir Julius Cæsar Curseny, Country, or to have any Freehold; but it was. Cr. Eliz. 395.*

was adjudged, because the Statute was made for speedy Execution, that it should be expounded favourably, according to the Intent and Meaning of the Makers of the Act; and though in this Case the *Tales* was prayed by the Plaintiff, where it ought to have been *ad requisitionem Defendentis*, yet that should be taken to be but a Misprision, and would be amended.

VI. If the Plaintiff or Defendant be *Executor* or *Administrator*, though he be an *Alien*, yet the Trial shall be by *English*, because he sueth in *Auter droit*; but if it be averred, that the *Testator* or *Intestate* was an *Alien*, then it shall be *per medietatem Linguae*.

Sberley a *Frenchmen*, who joined with *Stafford* in the Rebellion, in taking of *Scarborough Castle* in the County of *York*, he being taken, was arraigned in the King's Bench upon an Indictment of *Treason*, and the Indictment was *contra legiantiam suam debitam*; and the Indictment was ruled to be good, although he was no Subject, because it was in the Time of Peace between the *Queen* and the *French King*. But if it had been in the Time of *War*, then the Party should not have been indicted, but *ransomed*. It was likewise ruled there, that the Trial was good, although the *Venire facias* awarded in *York* was general, and not *de medietate Linguae*; for such Trial *per medietatem Linguae* does not extend to *Treasons*, and the Indictment ought to omit the Words, *Naturalem Dominam suam*, and begin that he intended *Treason contra Dominam Reginam*, &c. *Hill. 36 Eliz. in B. R. Stephano Ferrara de Gama's Case in Dr. Lopez's Treason.*

If an *Alien Enemy* come into this Realm, 7 Co. 6. b. and be taken in *War*, he cannot be indicted of *Treason*, for the Indictment cannot conclude *contra legiantiam suam debitam*, for he never was in the Protection of the King; and therefore he shall suffer Death by *Martial Law*, and so it was ruled in 13 H. 7. in *Perkin Warbeck's Case*, who being an Alien born in *Flanders*, feigned himself to be one of the Sons of King *Edward* the Fourth, and invaded the Realm, with intent to take upon him the Dignity; who had his Judgment and Trial by *Martial Law*, and not by the *Common Law of England*.

Sir John Davies's Conquest of Ireland, fol. 103. 104, 105.

VII. The Kingdom of *Ireland* was a Dominion separated and divided from *England* at the first, and came to the Crown of *England* by *Conquest*, in the Time of *Henry* the Second; and the meer *Irish* were as *Aliens, Enemies* to the Crown of *England*, and were disabled to bring any Action, and were out of the Protection of the Laws of this Realm; and five *Scepts* of the *Irish* Nation were only enabled to the Laws of *England*, viz. *Oneil de Ultonia*, *O Mollogblin de Media*, *O Connogbor de Connacia*, *O Brian de Tholmonio*, and *Mac Morough de Lagenia*, as appears by the Records of the Dominion of *Ireland*, and several Grants have been made to the *Irish*, which proves them to be mere Aliens. But afterwards, though the same was a separate and divided Kingdom, yet whilst they were under the Subjection and Obedience of the Kings of *England*, if *High Treason* had been committed by an *Irishman*, he might be arraigned, indicted, and tried for the same within *England*, and by the *Laws of England*; and so it was resolved by all the Judges of *Eng-*

Co. 7. fol. 23. Calvin's Case.

England in Ormoke's Case, 33 Eliz. and also in Sir John Perrot's Case, that Ireland was out of England, and yet that all Treasons committed there, were to be tried in England, and that by virtue of the Statute of 38 H. 8. cap.

Cra. Car. 333. 23. Arthur Crobagen, an Irishman, was arraigned, for that he being the King's Subject, at Lisbon in Spain used these words, I will kill the King (innendo Dominum Carolum Regem Angliæ) if I may come unto him, because he is a Heretick; that afterwards he came into England, and was taken, and tried by a Jury of Middlesex, and was found guilty; and it was held High Treason by the Course of the Common Law, for his traiterous Intent, and Imagination of his Heart is declared by these Words, and within the Statute of 25 E. 3. he confessed he was a Dominican Fryer, and Priest in Spain.

14 Eliz. in the Case of the Duke of Norfolk, 4 Instit. 279. Brañon says, that an Alien born cannot be a Witness; but that is to be understood of an Alien Infidel; for the Bishop of Ross, being an Alien born (a Scot) was admitted to be a Witness, and sworn.

On a Complaint of *I. F.* at the Council, against General *S.* as Governor of *G. A. B. M.* a Moor was produced as a Witness, and sworn upon the *Koran*. 2 *Stra.* 1104. *N. B. Lee* and *Willes*, Ch. Just. were both present.

Lord Chancellor *Hardwicke*, assisted by *Lee* and *Willes*, Ch. Just. and *Parker*, Ch. Bar. were of opinion, that the Depositions of Witnesses of the *Gentou Religion* (*Mabometans*) sworn on the *Koran*, according to their Ceremonies, ought, upon the special Circumstances of this Case (and his Lordship declared he carried it no farther) to be read as Evidence in the Cause. *Atk. Rep.* 21. *pl.* 10.

2 *Eq.*

2 Eq. Cas. Abr. 397. pl. 15. 2 Stra. 1104.
in Marg.

An *Infidel* may bring an Action against another Merchant, or any other however *, * 11. H. 8. and that without Controversy. fol. 4.

VIII. The Testimony of a *Renegadoe* is not to be received at this Day, by the Laws of any *Christian Kingdom* or *Republick*; he that hath once renounced his *Faith* can never be believed, therefore he cannot be a Witness; and so it was ruled, where one *Domingo de la Cardre*, a *Renegadoe*, who was sworn, and gave Evidence; afterwards a new Trial being granted, his Testimony was rejected, and he not suffered to be sworn, it being at his Trial proved, that he was a *Spaniard*, and a *Christian by Birth and Education*, and after became a *Jew*. *Hill. 17, 18. Car. 2. in B.R. Robles Langston.*

IX. If an *Alien be Resident*, and commits an Offence, he shall have the Benefit of the King's *general Pardon*; but if he is *not in the Kingdom* at the Time of the Pardon promulgated, then he loses the Benefit of the same; for he is no otherwise a Subject, but by his *Residence here*. *Hobart, 271. Courteen's Case.*

C H A P. V.

Of Planters.

- I. *Of Possession and its Original Right.*
- II. *Of Vacancies natural, which give a Right to Planters.*
- III. *Of Civil Vacancies, how far the same might be possessed.*
- IV. *Of Persons expelled, whether just to deny such to plant in Places vacant.*
- V. *Of Planters, whether they have a firm Right, so as to dispose by Will, or only a Usufructuary Possession.*
- VI. *Of Planters, wanting Things necessary for the Support of human Life, generally considered according to the Laws of Nature.*
- VII. *Wherefore one Man may naturally have more than another, and what Conditions are annexed to such Fortunes, for those that are in Necessity.*
- VIII. *Whence it is, that there was at the Beginning, and is still a tacit Condition of re-assuming our original Rights in case of extreme or natural Necessity for natural Community.*
- IX. *Of Necessity considered in a Christian Community.*
- X. *Of the Primitive Communion considered in reference to its Restrictions and Limitations.*
- XI. *Of those things that are dedicated to God, and holy Use, whether subject to the Relief of our Necessity.*

*Ascham.
fol. 15.*

I. HAVING in the first Chapter of this Work discoursed of the Original of Property, deducing its Inception to that which we call Possession or *Meum*, and how the same may be altered by War, it may not seem unnecessary to discourse of the acquiring of Property in the new Discoveries of those vast Immensities of *America*, which being
pre-

prepossessed, seem to deny us legally that Title which we pretend to.

Possession by Law is esteemed the highest Title that Men can pretend to what they enjoy, which is nothing else but *positio pedis*; as if the Ancients had no other Seal to confirm their Tenures, but the Prints of their Feet: And good Reason, seeing the Mind is not able to take up a Place so well as the Body; for many Men's Wills may concur in (wishing and liking) the same thing, but many Bodies cannot concur to the possessing it: Besides the Mind cannot set an outward Mark on what it likes, that thereby others might be warned to abstain from it, all which the Body properly doth. *Abraham* and *Lot* going to plant, declared no more than this, *there was Room or Vacancy enough*; and therefore, without further Examination or Scruple, they knew they might turn to the right Hand or to the left, to possess what they would to themselves.

II. This Vacancy, which gives us a right to plant, is to be considered in two Respects; 1. Natural: 2. Civil: The first is in things which may be possessed, but actually are not, neither in Property nor Use; such a Vacancy, which is *nullius in bonis*, might be occupied by *Switzers*, who, as *Cæsar* saith, would fain have changed their rough Hills for some near *Campania*; and Desarts or Places uninhabited may be possessed and appropriated to the first Planter, and that without all Controversy, but especially by those who being expelled from their own Seats or Estate, seek Entertainment abroad: The *Ansebarians* in *Tacit. Annal.* *Tacitus*, cry out, *As the Heaven to the Gods, 13. so is the Earth granted to Mortals, and what*

is void is publick: Looking up to the Sun and Stars, they did openly as it were inquire of them, Whether they were pleased in beholding any Ground empty, and without Inhabitants, they should rather cast forth the Sea, and overwhelm the Spoilers of the Earth.

*Ubi nec possessio
est plene in ho-
mine, nec homo
plene in posses-
sione.*

III. Civil Vacancy is where it is not absolutely incorporated, as among the roving *Arabians* and *Moors* in *Barbary*, and other *Africans* and *Americans*, who possess one Place To-day, and another To-morrow; these by their frequent Returns shew, that they abandon not the Places they remove from, as *derelicta quæ quis in bonis amplius numerare non vult*; we cannot say, that their natural or voluptuary Interest in them is no way improved, for *Grotius* seems to be of Opinion, * that if there be some Desert or barren Ground, the same ought to be granted to Strangers upon their Request, and, says he, *It is also rightly seized on by them, giving this Reason, For that Lands ought not to be esteemed occupied which are not cultivated; but only as to the Empire, which remains intire to the first People, they do no Offence who inhabit, and manure a Part of the Land that lies neglected* †.

* *De Jure Bel-
li ac Pacis lib.
2. cap. 2. §. 17.*

† *Dion. Pru-
sæases, Orat.
5.*

But we must press this Argument of *Grotius* very tenderly, lest by the same Reason others conclude, that those Estates which are not competently improved, are derelict and occupiable by others, which would introduce perpetual Confusions, and easily persuade every Man, that he could husband his Neighbour's Lands better than himself: However, this is a clear Case for all Planters, that those *Wastes*, or *asperæ montes*, which the Natives make no use of, nor can receive any Damage by their

*Res facta est
concessio, quæ
est sine damno
aliterius.*

their being possessed by others, may lawfully be impropriated by them.

IV. Again, if a Nation or People expelled their own Country, should desire to seek void Places, or at least such as might not absolutely endamage a People into whose Territory they come, they may justly plant; the Reason is, for that Dominion or Property might be introduced with a Reception of such Use which profits * such distressed People, * and hurts not those; and therefore the Authors of Dominion are supposed willing rather to have it so; but to give away that which we have but a bare Right to, and no Possession, can neither be just in the Giver, nor lawful in the Receiver. We have an eminent Example of this amongst the *Turks*; for the *Tartars*, having over-run the North of *Asia*, and many Nations, fled from their own Countries for fear of them, amongst other the *Corasines*, a warlike People, being thus unkennelled, they had their Recourse to the *Sultan* of *Babylon*, and petitioned him to bestow some Habitation upon them; their Suit, according to the Rules of Policy, he could neither safely grant nor deny; to admit them to be Joint-tenants in the same Country with the possessed *Turk*, would turn to a present Inconvenience and a future Mischief, and to deny them, might perhaps edge their Discontents into Desperateness; therefore, instead of giving them Gold, he sent them to the Mines, yet so as they took it as a very great Courtesy; for he bestowed on them all the Lands which the Christians held in *Palestine*, liberally to give away what was none of his, and what the others must purchase before they could enjoy: Sad was the Donation;

Bald. 3. Conf. 293.

Serv. ad 7. Æn. Littusq; rogatus in- nocuum, cujus vindicta, ait, nulli posse nocere.

Matthew Paris, fol. 851.

Matthew Paris, fol. 834, 835.

Donation; for by virtue of that Conveyance they became Conquerors of *Jerusalem*, and of the whole Strength of the Christians.

V. But admitting that Planters may appropriate a Plantation for their Living, whether such may dispose of the same by Will (we supposing the Possessor having no Heir) for that he might seem to have but a usufructuary Possession, till a Descent had been cast, which then perhaps may turn the same into a Right: † Without all Controversy the very immediate possessing and planting creates a Right against all, but he that hath Empire there, and that very Right, the Party in his Life-time might have actually transferred over to another. Now though the Devise in the Will operates not till after his Death, yet the Gift is made during his Life; according as the *French* have it, *Se despoiller avant que s'en aller coucher*, that is, Man first puts off his Cloaths, and then goes to Bed.

† As it is consonant to Nature that my Share of Subsistence, which was before uncertain, should now be fixed, so it is necessary, that the Consent which others gave to this at first

should stand fixed, especially if there was no Obligation or Declaration at the first to the contrary. *Vide Selden de Jure Nat. & Gen. ad men. Heb. id. obligat. quod est ex officio quod legis est*: But the Sanction of a Law supposes the Nullity of a State of Nature, not of a Right of Nature.

VI. Again, Persons having arrived in those Territories, and planted, but before they have reapt the Fruits of their Labour, Necessity is found within their Huts, and a Supply of things for the Support of human Life is wanting, whether such may seek the Means of Subsistence by the Laws of Nature, and in case of Refusal (after Request) force them from their Neighbour Planter? Surely that which is necessary for my natural Subsistence, and not necessary to another, belongs justly to me, unless I have merited to lose the Life which

which I seek to preserve. There were a Defect in God's creating our Natures, such as they are, if he did not provide Means to uphold their Beings; according to the natural Faculties which he hath given them. A good ^{Pia mater} Mother divides her Bread among her Children, so as a Morfel may come to each; let us therefore judge this Case by those Rules of Justice, by which we judge other Cases: If a ^{panem inter} Father in his Will pass by a Child, or names him, but upon false Causes leaves him nothing, he is notwithstanding by the Equity of the *Civil Law* admitted to a Child's Part, as *legitimate*, and may form his Action *contra Testamentum inofficiosum*. Men are all akin, and we derive one from another, and to let others settle in our Places, who may justly expect as much due to them, for their natural Subsistence, as was to those who before went out of the World, to make Place for them, yea though they assign them nothing at their Departure.

Man were of all living Creatures most miserable, if he might not during this Life have that Measure, which God would not have an Ox defrauded of; thus hath every Dunghil-Fly a Right to live, and to remain insectile, which besides Existence hath Sense, and may not justly be deprived of that its chiefest Felicity, unless it be importunate to a nobler Creature.

VII. 'Tis very true, that no Man can pretend to share in the Sweat of another Man's Brows, or that the Pains, and wasting of another Man's Life, should be for the Maintenance of any but his own; nay, though it be granted, that those Neighbour-planters, who being settled before us, and having ac-

Xenophon in the answer to the Cynopenes: Ubi jus emendi nobis non conceditur sive in Barbarico, sive in Graecano solo ubi quæ opus sumus, non per vim, sed ex necessitate. Expedit. Cyri.

Lessius. lib. 2. cap. 12. dub. 12. num. 70.

2 Cor. 8. 13.

quired either by Industry, or lawful Donation, the Fruits of other Men's Labours, and consequently must enjoy more Plenty than a new Comer or Planter, yet all that they possess is not properly theirs; for if another by extreme Necessity be perishing, and they have above what they can consume in a natural way, then they have no fuller a Property in that Plenty than Stewards have, and for this Regard they are so called in Scripture; *The Earth still is the Lord's, and the Fulness of it is his, for he made it of his own Matter, and for the Fashon of it used not our Aid; yea, it is his Sun which still produces, and his Clouds which drop Fatness:* We can only pretend the Contribution of a little Pains for that which is our natural Share; so that in plain Reason we may not expect to be otherwise qualified than Stewards, for all that which is not probably necessary for our own Subsistence, or for theirs, who subsist only by us: Wherefore if *Lazarus* ready to perish (not by Fault, but by Misfortune) had taken *Dives* his Crumbs, contrary to his Will; yet he had sinned no more than he who takes something which the Lord or Master hath given him, tho' the Steward contradict it: But if it so happen, that both the Planters are *in pari necessitate*, then *melior est conditio possidentis*; or, as St. Paul's Words are, when he excited the Churches Charity and Alms, for the Relief of the distressed Members of Christ, *Not* (quoth he) *that other Men be eased, and you burdened.*

VIII. The Will of those who first consented mutually to divide the Earth into particular Possessions, was certainly such as receded as little as might be, from natural Equity; for written Laws are, as near as possible, to be

be interpreted by that; and therefore in Cases of such Extremities we are not without Examples, of taking the Goods of one to supply the Necessities of many: And therefore at Sea, if Provisions begin to fail in a Ship, every one may be forced to bring out openly, what he laid in for his Passage in particular; so a Ship at Sea, having in Stress of Weather spent her Sails, Cordage, and Anchors, meeting other Vessels at Sea, may take a Supply of such as shall be wanting; but yet governed according to St. Paul's Words, *So that such taking straitens not the other Ship.* So when the Sea breaks in upon a Country, we may dig in the next Man's Grounds to make a Bank, without staying for the Owner's Permission, yea tear down any Man's Hedge or Fence when the common Passage is stopped: For in such Cases of Necessity, human Laws (as is mentioned afore) do not so much permit as expound their natural Equity, and that which Men give to those who are so innocently distressed, who borrow Life only from the Shadows of Death; *Et p̄cta se tempestate tuentur*, is not so properly a Charity to them as a Duty; and if he be a Christian that gives, perhaps he doth more Charity to himself than to the Receiver.

IX. The Reason of this Christian Charity or Communion is as far above the natural, as Christ himself was above Nature; this requires an equal Beating of all Pulses, that as Fellow-Members we have a *homogeneous* Sense and Palpitation; we are to divide a Cruse of Oil, and a few Handfuls of Meal, with one of Christ's Flock, with an abandoned Creature; and what can be in more Extremity than a

Grotius de Jure Belli ac Pacis, lib. 2. cap. 2. §. 7, 8, 9.

Leges humane obligant uti facta sunt sci- licet cum sensu humane imbe- cillitatis.

Nequicquam fundo suspires nummus in imo.

poor Planter in a strange Place, destitute for the present Supports of human Life?

And surely the Violation of this *Jus Charitatis* is no less than Theft in those, who having extended Fortunes, never defalcate a *Gibeonite's* Crust perhaps for a wandering Angel; these steal even the shipwrecked Man's Picture from him, which as his whole Inheritance he carried at his Back, to move Compassion, and by the insatiable Sea of their Avarice and Luxury, they wreck him over at Land.

X. But this free primitive Communion had, and hath its Bounds, and its *quantum* in Contributions, as well as the natural, otherwise it might be fraudulent, and thieving:

* *Intenditur inquit socordia languescet industria, si nulus ex se metus aut spes, & securi omnes alient subsidia expectabunt, sibi ignavi, & nobis graves.*
Tacit.

For they who possess but a little, would contribute it all, on purpose to share equally with those who possess very much, which would introduce a visible Decay and Ruin in all; as *Tiberius* rightly observed * on *M. Hortatulus* his petitioning an Alms for *Augustus Caesar's* Sake, *Idleness would increase, and Industry languish, if Men should entertain no Hope nor Fear to themselves, but securely expect other Men's Relief, idle to themselves, and burdensome to us?*

Wherefore in the midst of that primitive Communion, we find that the Apostles went *domatim*, from House to House breaking of Bread, therefore they even then retained by their Houses in Property; which Property is supposed by the eighth Commandment, as well as it is by Christian Charity: For no Man can steal, but by invading the Right of another; and as for Charity, it is necessary he have something of his own, to be able to fulfil its Commands, and to make a Dole at his Door; and it is very convenient that he give it rather with his own Hand, than by some

some publick Collectors, *For Charity is beaten most with the Sense of its own Action.* More-Mat. 7. 11. over under the Law, Jews were commanded *to love one another as themselves*; yet this Command took not away Property then, therefore it takes it not away now, notwithstanding we owe the Use or Usufruct of our Properties to the Distressed, though ourselves be at the same time in Distress; just as we are commanded, by the Peril of our own Lives, to endeavour to secure our Neighbours Life, which is yet a Charity more transcendent than the other; by how much Life is above a Livelihood. And though the various Laws of Countries have variously provided Punishment for those, who out of mere Necessity take something out of another's Plenty; yet that proves not the Act to be Sin, or repugnant to Equity or Conscience, but rather repugnant to the Convenience of that Kingdom or Republick where the Act is committed; and the true Reason of the same is, lest thereby a Gap might be laid open to Libertinism; besides, Reason of State, we know, considers not Virtue so much as publick Quiet and Conveniency, or that Right which is *ad alterum*.

XI. We will now consider those Things which are God's, which yet are not his in such a strict rigorous Sense, but that they lie open to the Exceptions of our just Necessities; hence that which is devoted as a Sacrifice to him, in case of Necessity, may be made our Dinner, witness the Action of *David*: Wherefore the Consequence of our Saviour's Answer was very strong, when he defended his pulling the Ears of Corn in another's Field: That if it was lawful for *David*:

in his Necessity to eat that Bread, which was provided for the Table of God, then how much more was it lawful for him and his Apostles in their Necessities to take a refreshing out of that which belonged to Man? by the *Canon Law*, if no other Means can be found, the Vessels of the Altar may be sold to redeem those Souls who are enthralled in Misery and Captivity; and is there not good Reason for it, seeing they serve but for the Souls of Men, and therefore the Souls of Men are more precious than they? Yea the Sacrifice itself, to what End is it, but to obtain a State of Piety for us?

Decretals of
Gratian, lib.
Synodus Nicæ-
ensis, Can.
Synodus Aure-
liacensis,
Can. Concili-
um Toletanum.

Upon what hath been said, it may not seem an Injury, if a Planter (wanting those Things for the Support of human Life) requesting a reasonable Proportion of his Neighbour (having it to spare) with an Intention to repay, if denied, by Force to take the same from him; for that Reason which creates a Punishment in a settled Commonwealth, for the like Actions, does in such Places fail.

Grotius de
Jure Belli ac
Pacis, lib. 2.
cap. 2. §. 8, 9.

C H A P. VI.

Of the Jews.

- I. *Of Considerations touching their various and several Forms of Government down till their total Extirpation.*
- II. *Of their first coming into England, and when.*
- III. *Of their State and Condition after their inhabiting here.*
- IV. *Of their Privileges and other Immunities in reference to their Monies and Charters.*
- V. *Of their Chests and Stars, and the Manner of Proceedings for the recovering of their Debts.*
- VI. *Of their Charters and Immunities, and of the Confirmation of the same.*
- VII. *Of the Consequences and Inconveniences that fell and were occasioned by reason of their Courts, as to the Ecclesiastical Cognizance.*
- VIII. *Of their Power in erecting of Synagogues, and of the Foundation of the House of Converts, now called the Rolls.*
- IX. *Of their Charter obtained of the Priesthood of all the Jews of England.*
- X. *Of Places totally exempted in England from their Society.*
- XI. *Of the Endowment of their Wives, according to the Laws of the Jews, and of their Power of Excommunication of each other.*
- XII. *Of the real State and Condition that they remained in, notwithstanding all their various and several Immunities.*
- XIII. *First, in reference to their Persons, being obliged to wear Badges or Tables on their Breasts, as Notes of Distinction, and having entered the Realm, could not depart without Licence.*
- XIV. *Secondly, as to their Estate, the same being solely at the Will of the King; for at their Death, the same escheated; they could not sue without Leave or Licence, the King might respite or release the same.*

same, and have nothing but what was solely at the Devotion of the State; continued so till their total Banishment out of the Realm.

I. **S**INCE the Remainder of that mighty Nation, which of old were elected a People peculiar, are now, by him that first chose them, dispersed over the Face of the Earth, and are become the most politick of Traders now extant, having by their Industry cemented themselves into the principal Revenues and Traffick of the Universe, but more especially among those Nations who remain in Darkness, and in the Shadows of Death. It might not seem improper to examine how their Condition stood of old in this Nation, what Advantages and Disadvantages they brought to this Realm, and how the Laws of the same stand in reference to the People at this Day.

At the first the Fathers of their several Families, and the First-born after them, exercised all kind of Government, both Ecclesiastical and Civil, being both Kings and Priests in their own Houses, they had Power over their own Families, to bless, curse, cast out, disinherit, and punish with Death, as is apparent by *Noah* towards *Cham*, *Abraham* towards *Hagar* and *Ismael*, *Jacob* towards *Siméon* and *Levi*, &c. In *Moses's* Days then did this Prerogative of Primogeniture cease; and as *Aaron* and his Posterity were invested with the Right and Title of Priests, so *Moses* and *Joshua* governed the People in a kind of Monarchical Authority.

After *Joshua* succeeded *Judges*, their Office was of absolute and independent Authority, like unto Kings when once they were elected;

elected; but there were long Vacancies and Chasms (commonly) between the Cessation of the one, and the Election of the other; yea, for the most part they seldom chose a Judge. but in the Time of great Troubles and imminent Dangers, which being over-past, he retired to a private Life, much symbolizing with the *Roman Dictators*, and continued with them according to the Computation of some 329 Years. In the Vacancies or Distances of Time between Judge and Judge, the greater and weightier Matters were determined by that great Court of the Seventy called the *Sanhedrim*, in which respect the Form of Government may be thought Aristocratical; Kings succeeded the Judges, and they continued from *Saul* to the *Captivity*, that is, about 500 Years.

*Aug. de Civit.
Dei, lib. 18.
cap. 22.*

From the *Captivity* unto the coming of the *Usher*. *Messiah*, which is thought to have been 536 Years, the State of the *Jews* became very confused, sometimes they were ruled by Vicegerents, who had not supreme Authority in themselves, but as it pleased the *Persian Monarchs* to assign them; they were called *Heads of the Captivity*, of which was *Zorobabel* and his Successors down to *Hofodia*, which were thought to have been of the Posterity of *David*; so likewise the other succeeding ten chief Governors under *Alexander the Great*, in the last of those ten, Government departed from the House of *David*, and was translated to the *Maccabees*, who descended from the Tribe of *Levi*, and from them the Sovereign Authority continued to *Herod the Askalonite* his Reign, at which Time our Saviour Christ was born according to *Jacob's Prophecy*: *The Scepter shall not depart from Judah, nor a Law-giver,* Gen. 49. 10.

giver from between his Feet, until Shiloh (that is, the Messiah) come; which Scepter was given to Judah, that is, to the twelve Tribes from the Time of Moses, and that it was taken fully from them in Herod's Time, and given

* A Jew is a Name of Profession, not of Country or Nation. Joseph Scaliger ex quo Casaubon, adv. Baron, pag. 19. & 39. Fol. 568, 569.

to him who was a * Profelyte, and no ways descended from that holy Stock, for such was Herod.

Their Condition, since the Extirpation of their Commonwealth, and their dispersing over the Face of the whole Earth, after the sacking of their Metropolis, is fully related by Josephus, Eusebius, and others, and what Condition, and how used in most Nations they have been since then, is fully illustrated by Heylin in his Microcosm.

II. When they came first into this Realm is not certainly related by any of the Historians in their Writings of British or Saxon Kings Reigns; however, this certainly appears, that William the Conqueror translated the Jews in Roan, from thence to London, ob numeratum pretium, for a Sum of Money given by them to him, who accordingly appointed them a Place to inhabit and trade in, which being assigned them, they were under the Protection and Patronage of the King, and as his mere Vassals, their Persons and Goods being his alone, and that they could dispose of neither of them without his Licence; and this appears by that ancient Law related by

Holinshed. Vol. 3. pag. 15.

Concil. 623. Sir Henry Spelman.

De Judæis in Regno constitutis.

Spelman Concil. 623.

“Sciendum est quoque, quod omnes Judæi ubicunque in Regno sunt, sub tutela & defensione Domini Regis sunt; nec quilibet eorum alicui diviti se potest subdere sine Regis

Regis licentia. *Judei, & omnia sua Regis sunt. Quod si quisquam detinuerit eis pecuniam suam, perquirat Rex tanquam suam propriam, (or detinuerit eos, vel pecuniam eorum, perquirat Rex si vult, tanquam suum proprium")* as *Sir Henry Spelman* renders it.

III These People, after they had planted themselves in this Isle, and being thus protected, drove on the Trade and Traffick of the same with a mighty Hand, to such a Height, that by the End of King *Rufus's* Time, they became powerful, rich and numerous, and to that Degree so zealous for their Religion, that they not only held open Disputes, but endeavoured to bring over by Monies the poor and needy to be of their Opinion. So high and insolent were they grown up in a short time, which continued till King *Henry the Second's* Reign, at which time their Condition became a Grievance to the Nation, by reason of their Oppressions, Murders, and Insolencies, which that King taking into Consideration, banished the wealthiest of them, and the rest he fined at 5000 Marks. The most pernicious Act of Murder which they were accused of, was, that generally on a *Good-Friday* they would, if possible, get a Child of Christian Parents, and crucify him in Derision of his Religion.

Jo. Brompton, Col. 1048.

Gervasius Drobervensis in his Chronica, Col. 1043.

Fox, Vol. 1. fol. 305.

IV. King *Richard*, after his Return from the *Holy Land*, taking into Consideration the Necessities and Straits that that expensive Expedition had brought him under, and being desirous to reduce the Monies and Estates of the *Jews* into such a Condition, as if Necessity should compel him to seize on the whole; but before the same could be done, it was pro-

*Matthew Pa-
ris, fol. 641.*

Rot. Pat. 41.

H. B. m. 4.

num. 6. Cok.

4. Infit. fol.

254.

*Job. Bromp-
ton, Collec.*

1258.

Hollingshed,

Vol. 3. p. 155.

propounded, that the King declaring his being sensible of the State and Condition of the *Jews*, a Means might be found out for the settling and peaceably driving of Commerce between the Christians and them; whereupon Judges were appointed to hold Courts touching the Government of the *Jews*, and their Commerce was appointed out in these Words:

All the Debts, Pawns, Mortgages, Lands, Houses, Rents, and Possessions, shall be registered; the Jew, who shall conceal any of these, shall forfeit to the King his Body, and the Concealment, and likewise all his Possessions and Chattels; neither shall it be lawful to the Jew ever to recover the Concealment; also six or seven Places shall be provided, in which they shall make all their Contracts, and there shall be appointed two Lawyers that are Christians, and two Lawyers who are Jews, and two legal Registers, and before them and the Clerks of William of the Church of S. Maries, and William of Chimilli, "shall their Contracts be made, and Charters shall be made of their Contracts by way of Indenture, and one Part of the Indenture shall remain with the Jew sealed with this Seal, to whom the Money is sent, the other Part shall remain in the common Chest, wherein shall be three Locks and Keys, whereof the two Christians shall keep one Key, and the two Jews another, the Clerks of William of St. Maries Church and William of Chimilli shall keep the third; and moreover there shall be three Seals to it, and those who keep the Seals shall put the Seals thereto. Moreover the Clerks of the said William and William shall keep a Roll of the Transcripts of all the Charters; and as the Charters shall

be

be altered, so let the Roll be likewise; for every Charter there shall be 3 *d.* paid, one Moiety thereof by the Jew, and another Moiety by him to whom the Moiety is sent, whereof the two Writers shall have 2 *d.* and the Keeper of the Roll the 3 *d.* and from thenceforth no Contract shall be made with, nor any Payment made to the Jews, nor any Alteration made of the Charters but before the said Persons, or the greater Part of them, if all of them cannot be present; and the aforesaid Christians shall have one Roll of the Debts and Receipts of the Payment, which from henceforth are to be made to the Jews, and the two Jews one, and the Keeper of the Roll one. Moreover, every Jew shall swear upon his Roll, that all his Debts and Pawns, and Rents, and all his Goods and Possessions, he shall cause to be enrolled, and that he shall conceal nothing, as is aforesaid; and if he shall know that any one shall conceal any Thing, he shall secretly reveal it to the Justices sent unto them, and that they shall detect and shew unto them all Falsifiers and Forgers of Charters, and Clippers of Monies, when and where they shall know them, and likewise all false Charters."

V. This Chest was called *Arca Chirographica*, or *Chirographorum Judeorum*, and the Notaries and Registers of them stiled *Chirographi Christiani* and *Judei Arce Chirographice London, Oxon*, or other such City where such Chests were usually kept. All their Deeds, Obligations and Releases were usually called *Stars* and *Starra*, *Starrum*, *Star* in our Latin Records, from the Hebrew Word (as Mr. Selden observes, *Shetar* contracted by the Omission of *be*) which signifieth a Deed or Contract,

See Purchas's Pilgrimage, l. 2. c. 10. §. 7.

It's conceived the Star-Chamber was the old Receipt where the Chest for Westminster remained

with the *Stars* of that City, and not so called, as it is mentioned, *Co. 4. Inst. 66.*

Some of them are now extant in the Treasury of the Exchequer in King *John's* Reign.

If any Christian became indebted to any *Jew* by such *Star* or Writing put up and reserved in his Chest, and paid not his Money at the Day appointed, together with all the Interest where any Interest was reserved, then he sued forth Letters by way of Process against him both for the Debt and Interest under the Notary's or Register's Hand, to appear before the Justices especially appointed for the Government and Custody of the *Jews*, to recover the same; but yet such *Jew* could not obtain such Licence till he had paid a Fine to the King for the obtaining of such Letters, *unum Besantum, viz. Besantum* for every Pound, and such *Stars* were in the Nature of Judgments, upon which Extents were sued forth, and the Lands of the Debtors were seizable, notwithstanding in whose Hands soever they came, after the *Star* was entered into *: And if it happened, that any Persons denied their Deeds, or any Controversy did arise upon which there was any Trial, the same was by a Jury half of Christians, and the other of six legal *Jews*.

Such *Stars* or Chest-Judgments were assignable to Christians, together with the Extents upon them, and the Assignee might vouch over the Assignor to Warrantry in such Case. So likewise to the King they might assign over Debts to pay their Taxes.

Vide Fine Rolls 6. Johan. m. 17. and likewise in H. 3. Ed. 1.

* *Fines 9. Job. memb. 5.*

Pat. pbrs 2. An. 3. Hen. 3. m. 1.

VI. As this politicke Prince had provided this Means for the discovering of their Estates, so he did from time to time award Commissions to Justices for the Trial of Causes and Controversies that arose between Christian and Jew, and granted them divers Liberties and Privileges, which afterwards were confirmed by these two ensuing Charters of King *John*.

Johannes Dei Gratia, &c. a. Sélatiſ nos *Chart. 2. Joh. n. 49. Charta*
conceſſiſſe omnibus Judæis *Anglia & Judæorum*
Normania, libere & honorifice habere reſiden-
tiam in terra noſtra & omnia illa de noſtris;
& omnia illa quæ modò rationabiliter tenent
in terris & feodis, & vadiis akatis ſuis: &
quod habeant omnes libertates & conſuetu-
dines ſuas ſicut eas habuerunt tempore præ-
dicti Regis H. Avi patris noſtri, melius &
quæius & honorabilius, Et ſi querela orta
fuerit inter Chriſtianum & Judæum, ille qui
alium appellaverit ad querelam ſuam dilatio-
nendam, habeat Teſtes, ſcilicet legitimum
Chriſtianum & Judæum. Et ſi *Judeus* de
querela ſua Breve habuerit, Breve ſuſtinet
eſſe teſtis. Et ſi Chriſtianus habuerit querelam
adverſus *Judæum* ſit iudicata per Pares *Judei*.
Et cum *Judeus* obierit, non detineatur corpus
ſuum ſuper terram, ſed habeant homines pec-
cuniam ſuam & debita ſua, ita quod mihi non
diſturbeter, ſi habuerit hæredem qui pro ipſo
reſpondeat & rectum faciat de debitis ſuis &
de forisfacto ſuo, Et liceat *Judeis* omnia quæ
eis apportata fuerint ſine occasione accipere
& emere, exceptis illis quæ de Eccleſia ſunt
& panno ſanguine lento. Et ſi *Judeus* ab
aliquo appellatus fuerit ſine teſte, de illo ap-
pellatu erit quietus ſolò Sacramento ſuo ſu-
per librum ſuum, & de appellatu illarum re-
rum

rum quæ ad Coronam nostram pertinent, similiter quietus erit solo Sacramento suo super Rotulum suum. Et si inter Christianum & *Judeum* fuerit dissensio de accommodatione alicujus pecuniæ, *Judeus* probatum Catallum suum, & Christianus lucrum. Et liceat *Judeo* quiere vendere vadium, postquam cettum erit, cum illud unum annum & unum diem tenuisse. Et *Judei* non intrabunt implacitum, nisi coram Nobis, aut coram illis qui curias nostras custodierint, in quorum Ballivis *Judei* manserint. Et ubicunque voluerint, cum omnibus catallis eorum sicut res nostræ propriæ, & nulli liceat eas retinere, neque hoc eis prohibere. Et præcipimus quod ipsi quieti sint per totam *Angliam* & *Normaniam* de omnibus consuetudinibus & Theolonijis & modulatione vini sicut nostrum proprium catallum. Et mandamus vobis & præcipimus quod eos custodiat, & defendatis, & manu teneatis, & prohibemus ne quis contra chartam istam de his supradictis eos in placitum ponat super forisfacturam nostram sicut Charta Regis *H. Patris nostri* rationabiliter testatur. Teste *T. Humf. filio Petri com. Essex, Willielmo de Mereſcal. Comb. de Pemb. Henr. de Bobun Com. de Hereford. Robert de Turnham, Willielmo Brywer. &c.* Stat. per manum *S. Well. Archidiac. apud Marleberg, decimo die Aprilis Anno Regni nostri secundo.*

*Chart. 2. Joh.
ban. n. 53.
confirmatio
Judeorum de
libert. suis.*

Johannes Dei Gratia, &c. "Sciatis nos concessisse, & presenti carta nostra confirmasse *Judeis* nostris in *Anglia*, ut excessus qui inter eos emerſerint, exceptis hiis qui ad Coronam & Justitiam nostram pertinent, & de Morte hominis & mahemio, & de assaltu præmeditato, & de fractura domus, & de raptu,

raptu, & de Latrocinio, & de combustionē,
& de Thesauris, inter eos deducantur secundum Legem suam, & emendentur, & Justitiam suam inter seipsos faciant. Concedimus etiam eis, quod si quis eorum alium appellaverit de querela quæ ad eos pertineat, Nos neminem compellemus ad testimonium cuiquam eorum contra alium exhibendum, sed si appellator rationabilem & idoneum testem habere poterit, eum secum adducat. Si quod vero opus sceleratum & apertum inter eos emergerit quod ad Coronam nostram vel ad Justitiam pertineat; sicut de prædictis Placitis Coronæ licet nullus eorum noster appellator fuerit, Nos ipsam querelam faciemus per Legales *Judeos* nostros *Angliæ* inquire sicut Charta Regis *H. Patris nostri* rationabiliter testatur. Teste *G. filio Petri com. Essex, Willielmo Mareschallo com. de Pemb. Hen. de Bobun com. de Hereford, Petro de Pratell. Roberto de Turnham, Willielmo de Waren, Hugo de Nevil, Roberto de Veteri Ponte.* Dat. per manum *S. Well.* Archidiac. apud *Merleberg* decimo die *Aprilis* Anno Regni nostri secundo."

VII. This Court being thus erected for the Government of the *Jews*, under Colour of *Cok. 4. Instit. fol. 254.* the same, there were many Evasions found out to avoid the Punishments which they justly acquired for their several Delinquencies; and therefore when any of these *Jews* were convicted before any of the Ecclesiastical Judges for Offences against an Ecclesiastical Person, or for Ecclesiastical Things, or for Sacrilege, or for laying of violent Hands upon a Clerk, or for Adultery with a Christian Woman, the Consequence of the Cause was always avoided

the King's Prohibition, because (as was al-
 ledged) they had their proper *delegated Judges*,
 who should and ought to have Conſuſance of
 ſuch Things; ſo that if a *Jew* happened to be
 convened before the Judges aſſigned for ſuch
 things, upon denial of the ſame by the Perſon
 alone, the ſimple Aſſertion of another *Jew*,
 and of one Chriſtian without the adminiſtring
 of any Oath, they might have purged them-
 ſelves, the Proof of the Proſecutor being ut-
 terly rejected.

*Matthew Pa-
 ris additamen-
 ta, fol. 202.
 207.*

*Decret. Gra-
 tian, lib. 5.
 Surtius Concil.
 Tom. 3. p. 726.*

VIII. By the *Canon Law*, no *Jew* could
 build or erect a Synagogue, for if he did,
 the ſame was ſeizable into the Crown: The
 like was ſo done in the Year 1231, when they
 had erected and new-built a curious Structure
 for a Synagogue, the ſame was taken into the

** John Stow's
 Chron.
 fol. 182.*

King's Hand *, and dedicated to the *Bleſſed
 Virgin*, and afterwards granted to the Brethren
 of St. *Anthony* of *Vienna*, and called St. *Antho-*

** Decret. Gra-
 tian, lib. 5.
 Matthew Pa-
 ris Hiſt. Angl.
 fol. 393.*

nie's Hoſpital; but yet an old * Synagogue
 they might repair.

King *Henry* the Third finding that many of
 the *Jews* were converted to the Chriſtian Faith,
 but yet were notwithstanding perſecuted by
 their Bretheren, erected a convenient Houſe
 and Church, with all neceſſary Accommoda-
 tions, and called it by the Name of the *House
 of Converts*, in which Place, if any would live
 a retired Life, they had all Accommodations
 granted them for their Lives; which Place
 continued a Houſe of Alms and Receptracle for
 the converted *Jews* conſtantly down till 18 *Ed.*
 3. and then there proved a Failure of ſuch
 Converts, and the Place became empty and
 ruinous; whereupon that Prince, in the eigh-
 teenth Year of his Reign, granted the ſame
 Houſe to other poor People who had nothing

to live on, with the Benefit and Accommodation of the Gardens and other Things, and an Alms of 1 d. a Day out of the *Exchequer* to each poor Person: Which Place one *William de Bunstal* being made Guardian of, and likewise at that time Master of the Rolls, afterwards obtained of that King to annex the same House and Chapel of the Converts to the Master of the Rolls and his Successors for ever. 51 E. 3. m. 20.

The Constitution of this Society (when it was in being) was pursuant to the Canon Law; for by that it was decreed, reciting, *That in regard the Companies of evil Men do oftentimes corrupt even the good, how much more then those who are prone to Vices? Let therefore the Jews, who are converted to the Christian Faith, have no further Communion henceforth with those who still continue in their old Jewish Rites, lest peradventure they should be subverted by their Jewish Society.* Therefore *We decree, That the Sons and Daughters of those Jews who are baptized, and that do not again involve themselves in the Errors of their Parents, shall be separated from their Company, and placed with Christian Men and Women fearing God, where they may be well instructed, and grow in Faith and Christian Manners.* And further by the same Council it was decreed, *That if a Jew should have a Wife converted to the Faith, they should be divorced, unless upon admonition the Husband would follow.* 4 Concil. Toledo, Can. 59.
61, 62.
Grat. Dist. 28.
qu. 1. c. 29.
qu. 1.

IX. However, these People having got footing for their Persons, soon obtained Licence notwithstanding against the express Canons, not only for the erecting of Synagogues, but also obtained a Charter, whereby was granted to one James of London, a Jewish Priest, the

Rot. 1. Reg. Johannis, part 1. m. 28. Chart. 17. Vide the same at large, 4 Inst. 508.

Priesthood of all the Jews throughout all England, "to have and to hold it during his Life freely, quietly, honourably and intirely, without Molestation, Trouble or Disturbance by any Jew or Englishman in the Exercise thereof, &c." And in the very close of the same there is also granted, "That he should not be impleaded for any Thing appertaining to him, but only before the King himself, or his Chief Justice." This Charter was made at *Roan*, from whence the Conqueror first transplanted these People into this Realm.

X. And though they obtained footing in most of the great Places of *England*, yet some there were who obtained such favour, as to be exempted of their Company, as *Newcastle*, to which Corporation it was granted, That no Jew from thenceforth should remain or reside in their Town during the Reign of King *Henry* the Third, or his Heirs; so likewise they of *Southampton*, *Winchelsea*, *Wicomb*, *Newberry*, *Berkhamsted*, and other Places.

Claus. 18 Hen. 3. m. 16. Vide Chart. 18 H. 3.

Claus. 5 H. 3. m. 17. de dom. Judæorum.

If a Jew died and left an Infant, the House did escheat to the Crown, until the same was redeemed by the Heir at full Age, and in the interim the King might grant the same till he came of Age, together with all his Goods, Chattels, Lands, Tenements and Hereditaments, and then upon Payment of their Fines, they had a special Writ of Restitution awarded to give them actual Possession.

Selden. de successibus apud Hebræos, c. 20.

XI. By the Laws of *England*, if a Man died, leaving Issue divers Sons, the Lands descended to the eldest; but a Jew dying, leaving Issue divers Sons, after the Fine paid to the King, they all inherit Lands, Goods, and Chattels in a kind of *Coparcenary* *. So likewise by the Law of the Realm, if a Jew died

* But that was by the Establishment of

died seized of Lands, his Wife could not by the *Common Law* bring a Writ of Dower; yet she might bring a Plaint before the Justices assigned for the *Jews* in the Nature of a Writ of Dower, and should there recover, nevertheless subject to answer the King a Fine, nay though the Husband was converted to the Christian Faith †.

the Justices
appointed for
the *Jews*.

† *Cok. 1 Inst.*
fol. 31, 32.

Clauſ. 28. H. 3. m. 4. dirſo. Clauſ. 36 H. 3. m. 26. pro quadam Judæa.

The Power of Excommunication was granted the *Jews* to excommunicate any of their own Profession; but the same could not be done by them without Licence.

XII. Notwithstanding all these Privileges and indulged Liberties which were granted to them by those Kings from the Conqueror to that their fatal Year in 18 E. 1. yet they were in no other Condition but most absolute Bond-slaves, and exquisite Villains, for their Names were enrolled in the King's *Exchequer* for the *Jews*, and they confined to live and abide only in such Places as those several Kings, or their Justices assigned for their Custody, should prescribe and allot them, from which they might not remove without special Licence, but always be resident, that so the King's Officers might on all Occasions find both them and their Families, and then as often as the King's Pleasure was, were they translated from Place to Place, and not suffered to have any Habitation but where they had a common Chest, and where Taxes were imposed on them, or Debts were owing from them to the Crown, their Persons, Wives, Children, Infants, Families were imprisoned and sent to remote Places and Castles, nay banished, executed, and put to Fines and Ransoms upon all such Occasions as those

36 H. 3. m. 6.

Kings thought fit; they were sold either Person by Person, or in wholesale, as Bondslaves or Villains in gross by the King, and mortgaged to those who would accept them as a Pledge, or otherwise advance any Monies upon their Assignment.

2 *Claus. 2 H.*

3. *m. 10. dor. f.*

XIII. And that they might be distinguished from others, they were obliged always to bear a Badge and Table on their outmost Garments, as well Females as Males, wherever they rode or went, to distinguish them from Christians, with whom they were to have no intimate Communion, nor could the Christians be Servants or Nurses to the *Jews* in any kind, their State and Condition being such, that they were all of them mere Slaves and Servants to the King in one kind or other.

When they had entered the Realm, they were absolutely prohibited to depart without special Licence; the which they hardly and but seldom could obtain, and if they attempted it, the which they sometimes would do to avoid the heavy Taxes that were laid on them, they were imprisoned and put to severe Fines and Ransoms.

Claus. 15 Job.

mem. 13.

Fine 7. H. 3.

mem. 2. part 1.

Ebor.

XIV. As for their real and personal Estate, it was wholly at the Disposal of the King; for he might seize all their Lands, Houses, Rents, Annuities, Fees, Stars, Mortgages, Debts, Goods and Chattels whatsoever, and sell, grant, release, and give them to whom he pleased at his Pleasure.

Claus. 5 H. 3.

m. 17. de dom.

Judeorum.

At their Deaths their whole Estate, both Real and Personal, escheated to the King; neither could their Heirs or Executors, Wives and Kindred, have or enjoy them without making Fines, Releases, and Compositions, with the King for them.

And

And when they had Occasion to sue or implead any Person upon any Account, Real or Personal, they could not proceed till Licence obtained, which always was upon Fines made; and those very Actions, after they were commenced, he could stay, and the very Debts which they prosecuted for, he might respite Payment of Principal or Interest, and give what Time he pleased; nay, he could not only lower or lessen the Sums mentioned in their several Charters, but he might release them for ever; and though the King might pardon or release a Debt, yet he might notwithstanding revive * the same. And those * publick Chests, the common Repository of all their Fortunes, they often seized and sealed up the same, and disposed what of them they pleased to the King's own Use, notwithstanding their Charters and Grants of Privilege, nay, forced them sometimes to tax and distrain one another, under Pain of perpetual Imprisonment, Banishment, Confiscation of all their Estates, and the most severe Penalties that could be inflicted, they living purely under an uncessant and arbitrary Will of those several Kings; and that which was the more to be admired, that if they turned Christians, they immediately upon their Conversion forfeited all their Estates to the Crown. At length King Edward the First, having sought all ways that might be to reform the exorbitant Usuries and Oppressions which they daily committed, did, through the earnest Solicitation of the Commons, publish an Edict in Parliament for their total and universal Banishment, which accordingly was done, and the King at that Time sent his Letters and Letters Patents to several Sea-Towns, reciting,

*Claus. 7. Jo-
han. Reg.*

m. 26.

*Claus. 9. Jo-
han. Reg.*

m. 5, & 6.

*Claus. 35 H.
m. 5. dorf.*

Hillar. An. 52.

*H. 3. Rot. 9.
in the Exche-
quer.*

2 *Instit.* 507.

* *Matth.*
West. Flor.
Hist. An.
 1290.
part 2.
fol. 381.

In the 20th
 Year of *Ed. 1.*
 there endor-
 sed, *Charta*
de Judaismo
Litteræ Pa-
tescentes de domi-
bus Judæorum
concessis post
eorum exilium
de Anglia,
 above an hun-
 dred parti-
 cular Patents
 of the Sale of
 their Houses.

that he had prescribed a certain Time for their Departure out of the Realm, commanding them not to do, nor suffer any Wrong to be done them, but to grant them speedy Passage at their own Costs and Charges. After which prefixed time, if they were found resistant within the Realm, they were hanged*, and some of the Rents and Profits of their Houses were disposed to pious Uses, but all were generally seized into the Crown, and disposed and sold to the *English* by several Grants and Sales, under the Great Seal of *England*. Thus these People, having by their extraordinary Usury, Extorsions, and Oppressions, reduced themselves to be despicable, and then banished, and that by a People too, with whom, if they had continued in Love and Friendship, and improved their Fortunes by the Rules of Moderation, they in all Probability might have continued and flourished, they having from the several Kings, from the Conqueror down to their fatal Year, as many large Patents of Liberties and Franchises granted them, as ever were granted by any Christian Prince or State since the Extirpation of their Commonwealth.

But notwithstanding this, yet Commerce and Traffick having now taught them a more exquisite way of enriching themselves, than by that cruel and biting Trade of Usury, they have now got Footing into the Realm, and do now flourish in as high a manner as of old, (though it is hoped, not in that manner for which they justly procured their total Banishment out of the same) and since Time hath been so kind to them, as to destroy those Rolls and Monuments of their former Cruelties and Oppressions, and where their Banishment

ment was recorded (there being no other Footsteps of the same, nor of any other before 5 Ed. 2. to be found, they being totally lost; yet there are other Records that have sufficient Recitals of the same, as well as History to evince the Truth, if in the least contradicted) it is hoped, that if they continue in the Realm, that they will by their constant Actions consult and do such things as may stand with the Honour, Justice, and Good of the Kingdom.

By Stat. 13 *Geo. 2. c. 7. Sect. 3.* Whenever Jews taking any Jew shall present himself to take the Oath of Abjuration, in pursuance of this Act, the Words *upon the true Faith of a Christian* shall be omitted. the Oaths, may omit some Christian Expressions.

By Stat. 1 *Ann. Sect. 1. c. 30.* If any Jewish Parent, in order to the compelling his Protestant Child to change his Religion, shall refuse to allow such Child a fitting Maintenance, suitable to the Ability of such Parent, and the Age and Education of such Child; upon Complaint, it shall be lawful for the Lord Chancellor to make such Order for the Maintenance of such Protestant Child, as he shall think fit. Jewish Parents to allow their Protestant Children fitting Maintenance.

A Jew's Daughter turned Protestant; the Jew died leaving several Legacies in Charities, and his personal Estate to his Executor, but nothing to his Daughter; she petitioned the Lord Chancellor *Parker* for a Maintenance, upon the Statute of Queen *Anne*; it was objected, that she was forty-five Years old, and so the Care of her Education over. 2dly, that she is married, and not now to be called a Child, but to be provided for by her Husband. 3dly, that the Parent is dead, and cannot be said to have refused, and therefore the

the Power given by the Act is at an End. But Lord Chancellor *Parker* said, that he inclined strongly to think this Case to be within the Act, for several Reasons there mentioned by him, and that possibly the Charities given by the Will may be under some secret Trust for the Child if she should turn Jew, and therefore directed that the Master inquire into it, *Wil. Rep. 524. pl. 149. Black. Com. 439.*

C H A P. VII.

Of Merchants.

- I. *Merchandizing, the same is honourable and profitable both to Prince and State.*
- II. *The Advantages that might accrue to Kingdoms, if the more noble and richer sort applied themselves to the same.*
- III. *Of the first Institution of the Company of Adventurers.*
- IV. *Of the Institution of that in England to the Indies.*
- V. *Of the forming of that in Holland, to those Parts.*
- VI. *Of the forming the like by the most Christian King to the same Parts.*
- VII. *Of the Advantages and Disadvantages considered, in reference to reducing them to Companies.*
- VIII. *How Merchants in England were provided for of old.*
- IX. *Of their Immunities settled by Magna Charta.*
- X. *Of Merchant Strangers, whose Prince is in War with the Crown of England, how to be used in time of War, and the Reasons why Merchant Strangers ought to be used fairly.*
- XI. *Goods brought in by them, the Monies raised, how to be disposed, according to the Statute of Employment.*
- XII. *Merchant-Strangers, made Denizens by Parliament.*

ment, or Letters Patents, to pay as before they were so made.

XIII. *What things requisite that make a competent Merchant according to Law.*

XIV. *One Merchant may have an Account against his Partner, and if he dies, no Survivorship to be of the Estate belonging; or acquired in their Traffick.*

XV. *Of the Immunities which they claim by the Custom of Merchants, in reference to Exchange.*

XVI. *All Subjects are restrained to depart the Realm but Merchants.*

XVII. *Prohibitory Laws bind Foreigners according to the Leagues of Nations.*

XVIII. *The Necessity and Advantage that is incumbent on Merchants to preserve their Marks.*

I. **T**HERE are certain Affairs which should be left to the poor and common People to enrich them, but there are others which they only can execute which are rich; as that at Sea by way of *Merchandizing*, which is the most profitable in an Estate, and to the which they should attribute more Honour, than some do here at this Day. For if in all Estates, they have thought it fitting to invite the Subjects by Honour to the most painful and dangerous Actions, the which might be profitable to the Publick, this being of that Quality, that they should attribute more Honours to those that deal in it: And if *Nobility* hath taken its Foundations from the Courage of Men, and from their Valour, there is certainly no Vocation in the which there is so much required as in this; they are not only to encounter and strive amongst Men, but sometimes against the four Elements together, which is the strongest Proof that can be of the Resolution of Man. This hath been the Occasion, that some have been of Opinion, that they should open this Door

Præter mercaturæ usum Naturæ rei militari & tutandæ in mari contra externam vim reipub. inservire cæperunt, Aristot. 7. Polit. 6. Mare & classem in

to

bello esse tutelam reipub. ait Tacitus 5. *Hist. Classes Imperii munimenta vocant Atheniensium legati apud Thucydidem, lib. 1. H. Orat. ad Lacidamon. fortunas Græciæ in navium præsidio sitas fuisse prædicant, ejus rei muri lignei Themistoclis abunde fidem fecerunt, idem experientia satis hodie loquitur, Inde Cosmo Mediceo familiare fuit dictum, Non habendum potentem qui potentia terrestri, non simul etiam navalem haberet conjunctam. Et Hispanorum est adagium, Regnum sine portu esse sicut fœnum absque igne: Præterquam quid navigationes cultui vitæ, & artium translationi Colonialium valetudine, & voluptati serviant.*

The most usual way of buying and selling of Commodities, between Merchants beyond Seas, is by Bills of Debt, or Obligatory, called Bills Obligatory, which are there by the Law Merchant Alienable or Assignable, tho' not by our Law, as being held as *choses en Action*, where no Property can pass by Assignment or Alienation, though certainly it would be of great Convenience, were they by Act of Parliament made assignable, as, by Custom, their Bills of Exchange are by Endorsement. *Lex. mercat. 71.*

The Form of such a Bill Obligatory.

I, A. B. Merchant of *Amsterdam*, do acknowledge by these Presents to be truly indebted to the honest C. D. *English* Merchant dwelling at *Middleborough*, in the Sum of 500*l.* currant Money for Merchandize, which is for Commodities received of him to my Contentment; which Sum of 500*l.* as aforesaid, I do promise to pay unto the said C. D. (or

(or the Bringer hereof) within Six Months next after the Date of these Presents. In Witness whereof, I have subscribed the same at *Amsterdam*, the 10th Day of *July* 1704. *Stilo novo*. Sometimes, and in some Coun-*Lex. Mercat.* tries, this Bill is sealed. And if such Bill be 74. 75. made beyond Seas, by 2, 3, or more Persons, as having bought a Commodity as Partners together, or taking up Monies together at Interest; wherein they bind themselves all as principal Parties or Debtors, yet every one is bound to pay but his own Part, by the *Civil Law*, and Custom of Merchants.

Merchants ought to be very wary and circumspect in their giving a Character one of another, as to their Credit in their Dealings as to each others Ability, lest unawares they become Sureties, where not so much is intended. To which end I shall cite a Case in *Lex Mercat. cap. 10. fol. 69.* which was this. A Merchant being at *Franckfort* in *Germany*, during the Mart-Fair there, went into a Merchant's Warehouse to confer of some Business with him, where he found another Merchant of his Acquaintance cheapening a Parcel of Silk Wares of the said other Merchant, to whom this Man (as it seemed) was unknown; whereupon the Seller of the said Silk Wares took occasion to ask of him, whether he were a good Man, and of Credit, who answered he was. So the Bargain was made, and the Goods delivered to the said Merchant, the Buyer, to the Value of 460 *l.* For the which he made a Bill Obligatory, payable the next Fair following; at which time the Buyer not appearing, Demand was made of the Merchant that gave the Buyer the Character of being a good Man, and of Credit, who

who in his Defence did alledge, that what he said was but only a bare Character, and at most was but *Nudum Pactum ex quo non oritur Actio*, and so not bound to pay the same, as having had no Consideration for it: And upon Suit thereupon, he was adjudged to pay the said 460*l*. All he had for a Recompense to reimburse himself, was the Buyer's Bill Obligatory made over to him, which proved of no Avail, for that the Buyer became insolvent. Note, this was by the *Civil Law* and general Law and Custom between Merchants. Though I conceive this would not in any wise avail in our Law, but thought fit to add this Case as a Caution to Merchants. If he had said, he is taken or reputed to be a Man of good Credit, or, I take him to be so, he had been cleared by the Law, and the Custom of Merchants.

Action of Debt was brought by a *Concessit solvere*, according to the Law Merchant, and the Custom of the City of *Bristol*, *Godbolt. 49.*

Two Partners
one makes a
Factor.

If two Men be Partners of Merchandize in one Ship, and one of them appoints and makes a Factor of all the Merchandizes, both of them may have Writs of Account against him, or they may join in one Writ, *Tamen quære*, *Godbolt. 90. Fashion cont. Atwood.*

Account by
one joint Fac-
tor for the
other.

One joint Factor may account without his Companion by the Law of Merchants, for Factors are oftentimes dispersed, so as they cannot be both present at their Accounts. *Goore & als cont. Dawbeny, 2 Leon. 75, 76.*

Sale by a Fac-
tor, to one
that becomes
Bankrupt.

A Merchant delivered *Kerfies* to be sold in *Spain*, the Factor sells them to one who becomes a Bankrupt (and there is a Law in *Spain*, that if the Factor enter this before a Register, and had a Testimonial, that he shall be discharged)

charged) we judge here that he shall be discharged. In *Capps and Tucker's Case*. 2 *Rolls. Repts.* 497.

Account for Goods received *ad Mercandizandum* is good by Ch. Just. *Hales*. And against him, though declared against as Receptor general, yet shall not answer other Profits, and shall have Charges as a Bailiff. *Burdet cont. Tbreble*. 3 *Keeble* 387.

If a Servant or Factor buy Goods generally, Factor buys and doth not upon the Contract declare that generally. he only buyeth as Servant or Factor, he is chargeable in his own Right. *Degelder against Savory*. 2 *Keeble* 812.

In Account it was held *per Curiam*, that if a Man delivers Money to his Bailiff or Factor to lay out for him in Commodities, he cannot bring an *Assumpsit*, but only an Account; for it may so happen, that the Factor hath laid out more Money than he hath received. Where Account, not *Assumpsit*, lies against a Factor. 1 *Vent.* 113.

Indebitatus Assumpsit for 1000 *l.* for Monies had and received, and also an *Insimul computasset*, upon Account; the 1000 *l.* became due; the Defendant pleaded the Stat. of Limitations. The Plaintiff replied that he is a Merchant, and the Proviso and Exception for Merchants Accounts. By *Twisden, Rainsford & Moreton absente Kelyng*, stated Accounts between Merchants as this Case is, are not within the Proviso, but only Accounts Curreant, *Webber cont. Tyrell*. 1 *Levinz* 287. 2 *Keeble* 622. 2 *Sand.* 124. Where Judgment for the Defendant. Yet the Case of *Martin and Delboe*, 1 *Levinz* 298. to the contrary upon an Account stated between Merchants; yet the same Case, 1 *Mod.* 70. Judgment for Defendant, 2 *Keeble* 674. 1 *Vent.* 89. & 1 *Sid.* 2 *Keb.* 696.

Sid. 465. See likewise the Case of *Farrington* & *Lee*. 1 *Mod.* 268. & 2 *Mod.* 311.

II. Hence will grow many Advantages both to the Publick and Private: To the Publick, for that they that should deal in Commerce, having Means, Courage, and Sufficiency for this Conduct, it would be far greater in the furnishing more Ships to Sea, and better armed, the which the State at need might make use of for the Safety of the Publick, and would add to the Reputation of the Nation in all Parts, they knowing, that an Indignity or Damage offered to such, would require Satisfaction with a strong and powerful Hand; the which they cannot do, who being poor, and having but small Stocks, or what they borrow from Bankers, or are indebted for the Cargo which they send forth, have not the Courage to hazard themselves and their All in an Enterprize that is great. Besides, such who have Honour, Riches, and Courage, would keep up the Reputation of their several Commodities, by not lessening the Market, whereas the poorer sort, (to pay Customs, Freight, Bills of Exchange, and other contingent and necessary Charges, which accompany the importing and exporting,) are often forced to sell for an inconsiderable Gain; nay, some rather than their Wants should be known, will for ready Money sell their Goods for even less than they cost: All which would be prevented, if such Persons of Value would apply themselves to a prudent Management of the same; for whatsoever Hazard they run, there would be more gotten by such in two, than by the poorer sort in three or four Voyages, and by that means it would be the Occasion of avoiding many Expences, and pre-

prevent the importuning their Prince for Places, when perhaps they might get more at Sea in one year, than in ten at Court. Besides, Experience hath taught, and doth daily manifest, that where the most Substantial have dealt in Commerce, it hath enriched both them and the State under which they lived; and this present Practice of the *Venetians, Portuguese, Spaniards, and Hollanders*, plainly demonstrates.

Stat. 9. 10 W. 3. c. 15. Of ending Suits by Arbitrament. After the 11th of May 1698. All Merchants and Traders and others, desiring to end any Controversy, Suit or Quarrel, for which there is no other Remedy but by personal Action or Suit in Equity, by Arbitrament may agree, that their Submission of the Suit to the Award or Umpirage of any Person or Persons should be made a Rule of any of his Majesty's Courts of Record, which the Parties shall chuse, and may insert such their Agreement in their Submission, or the Condition of the Bond or Promise; and upon producing an Affidavit of such inserting, and upon Reading and Filing such Affidavit in the Court so chose, the same may be entred of Record, that the Parties shall submit to, and finally be concluded by such Arbitration or Umpirage. And in case of Disobedience thereto, the Party neglecting or refusing, shall be subject to all the Penalties of contemning a Rule of Court, and Process shall issue accordingly, which shall not be stopped or delayed, unless it appear on Oath, that the Arbitrators or Umpire misbehaved themselves, and that such Award was corruptly or unduly procured. In which case such Arbitration or Umpirage shall be void and set

Arbitrament, made a Rule of Court. This Statute does not extend to Submission by Rule of *Nisi Prius*. *Stru. 301. see 2 Bur. Rep. 701.*

aside by any Court of Law or Equity, so as such Corruption or undue Practice be complained of, in the Court where the Rule is made for such Arbitration, before the last Day of the next Term, after such Arbitration made and published to the Parties.

Which Clause may be to the Purpose following, at the End of the Condition. *viz.* And the abovementioned *A. B.* doth agree and desire, that this his Submission to the Award above-mentioned be made a Rule of His Majesty's Court of King's Bench, pursuant to the late Act of Parliament, for this Purpose provided.

The like for the other Party submitting to such Award.

Salk. 72. pl. 8.

Lord Raym.

674. Com.

Rep. 114. pl.

75.

A Submission was to an Award by Bond, and at the End of the Condition of the Bond was this Clause: *And if the Obliger shall consent that this Submission shall be made a Rule of Court, that then, &c.* Upon motion to make this Submission a Rule of Court, it was opposed, because these Words do not imply his Consent; but if he would forfeit his Bond, he need not let it be made a Rule of Court; yet because this Clause could be inserted for no other Purpose, the Court took these conditional Words to be a sufficient Indication of Consent, and made the Award a Rule of Court.

Salk. 73. pl.

10. 7 Mod. 8.

A Matter was referred by Consent at *Nisi prius* to the three Foremen of the Jury; and before the Award was made, one of the Parties served the Arbitrators with a *Subpoena* out of Chancery, which hindered their proceeding to make the Award. And the Court held this a Breach of the Rule, and granted an Attachment, *Nisi Causa.*

Upon

Upon a Submission to the Award of the three Foremen of the Jury, who made their Award, the Defendant moved to set it aside; because they went on without giving him Time to be heard, or produce a Witness: And *Holt* Chief Justice said, the Arbitrators being Judges of the Parties own chusing, the Party shall not come and say they have not done him Justice, and put the Court to examine it: *Aliter*; where they exceed their Authority: however, the Award was examined and confirmed, and the Plaintiff moved for an Attachment for not performing it, and the Court held, that the Non-performance, while the Matter was *Sub Judice*, was no Contempt: Then the Plaintiff moved for his Costs, and that was denied; upon which *Powel*, Justice, said, that seeing they could not give the Party any Costs, he should never be for examining into Awards again.

But Awards have been frequently set aside, especially in Equity, where the Arbitrators have appeared to have been mistaken, or have been guilty of Corruption or Partiality; as if they have an Interest in the Thing in Controversy. So where there are three Arbitrators, and two of them by Fraud or Force exclude the other. So where they awarded 495*l.* against one of the Parties, for calling the other, who was a Butcher, a *Bankrupt Knave*, to repair his Honour, as they called it. So where the Submission was to Arbitrators, and they had Power to chuse an Umpire, which they did, by throwing *Cross* and *Pile* who should name him, and for this the Court set aside the Award. *Bac. Abr.* 135. in *Marg.*

Bill to set aside an Award made pursuant to a Rule of Court in *B. R.* for Misbehaviour

Salk. 73. *pl.* 11.
Lord Raym. 857. This Motion will not be received before the Submission be made a Rule of Court.
2 Str. 1178.

in the Arbitrators upon this Case. The Plaintiff and Defendant entered into Arbitration Bond, and submitted to make it a Rule of Court; but the Plaintiff, not liking the Award, applied to the Court of *B. R.* to set aside the Award, and made several Objections to it; and the Court being divided in Opinion, a Rule was made to hear Counsel, why the Award should not be set aside, and afterwards that Rule was discharged; but the Court being divided in Opinion, the Plaintiff could not obtain a Rule for Non-performance of the Award, and therefore brought an Action upon the Arbitration Bond, and got Judgment upon it; and then *Ward* the Defendant at Law brought this Bill to be relieved against the Award. The Question was, Whether the Plaintiff at Law, not having pursued the Method prescribed by Stat. 9 *W. 3. c. 15.* by Attachment, but has brought an Action upon the Arbitration Bond at Common Law, and has not pleaded the Statute to the Jurisdiction of this Court; whether, upon these Circumstances, the Court may not proceed to examine the Awards. The Council for the Defendants insisted, that the Award being made by a Rule of Court, pursuant to the Stat. 9 *W. 3. c. 15.* and set out to be so made by Defendant's Answer, and the Defendant ought to have the Benefit of the Statute, as well as if he had pleaded it, and the Parties to the Award have no Remedy but by Application to the Court where the Rule was made; that this Statute was pleaded to the Jurisdiction of this Court *tempore Cowper, C.* and the Plea was allowed. Ordered, that the Master should make a State of the Case for the Resolution

Resolution of the Court. *3 Vin. Abr. 134. pl. 18.*

When Submission to an Award is by Bond, which is afterwards made a Rule of Court, the Court will allow the same Objection to the Award, as they would do when the same came before them on an Action on the Bond; otherwise there might be a Contradiction; but when a Submission is only by Rule of Court, that Court will not receive Objections to it; for it is the same as if the whole had been in the Rule; and the Court will not relieve when the Matter has been examined by another Court that had Jurisdiction, unless the Equity be, that some Matter of Fraud in the Award hath come to the Knowledge of the Party since the former Examination, which did not appear before the other Court; *per Lord Chancellor, who had taken formerly the same Distinction in B. R. 3 Vin. Abr. 134. pl. 19.*

H. bound himself in a Bond to stand to *Salk. 73. pl. 12. 10 Mod. 333. S. P.* the Award of *J. S.* which Submission was made a Rule of Court. The Party, for whose Benefit the Award was made, moved the Court for an Attachment for Non-performance, which was granted; pending that, he brought an Action of Debt upon the Bond; upon this Serjeant *Darnell* moved, that he might not proceed both ways; and likened it to the Cases, where the Court stays Actions on Attorney's Bills, while the Matter is under Reference before the Master. *Sed per Curiam*, the Motion was denied, and this Difference taken; where the Court relieves the Party by way of Amends in a summary way, as in the Case cited, there it is reasonable; otherwise here, where the Plaintiff has no Sa-

tisfaction upon the Attachment, and the Defendant was put to answer Interrogatories.

Salk. 83. pl. 1.
Motion was made for an Attachment for Non-performance of an Award, and *per cur.* here must be a positive Affidavit of personal Notice of Award and Demand of the Money all at one

Attachment lies not for not performing an Award made upon a Rule of Court without a Personal Demand. *Holt*, Chief Justice, remembered the first Attachment of this kind was in *Sir John Humble's Case* in *Kelyng's Time*, in which, and ever since, a personal Demand has been thought necessary. In such Cases of Awards, though they be not legally good, an Attachment lies for Non-performance, *aliter*, if impossible: but the Party is excused as to that Part which is impossible only.

Time, because it brings the Party into Contempt, but if the Party keeps out of the way on purpose, there must be an Affidavit thereof, and of Endeavour used to find him out and serve him, and it is but of late that Attachments have been the means to compel the Performance of Awards, but the old remedy, was *Casc*, 12 *Mod.* 257. 3 *Vin. Abr.* 132 in *Marg.*

Salk. 84. pl. 3.

If a Rule be made at *Nisi prius* to refer a Matter to the three Foremen of the Jury, and that the Plaintiff may either enter upon Judgment on the Verdict, or have an Attachment for not obeying the Rule of Court, it being in his Election which way he will execute the Award; and this was affirmed by *Mr. Northey*, and at the Bar, to be the constant Practice. *Tourton* and *Gould* (in the Absence of the Chief Justice) doubted of it, because the Verdict stood still on Record; to which *Mr. Northey* answered, there could not be a Judgment entered on such Verdict without Leave of the Court: And the Attachment was granted.

Rule made upon a Witness to a Submission to an Arbitration, to make an Affidavit of the Execution, 10 *Mod.* 332. *Stra.* 1.

Where

Where a Rule is entered into by Consent to refer a Matter to the Judge of Assize, there needs no Motion to make his Order a Rule of Court, for the former Rule gives it a Sanction. *3 Vin. Abr. 132. pl. 7.*

Upon the same Point being moved, *Holt*, Chief Justice, said, that where a Matter is referred to Arbitrators by Rule of Court, and they make their Award, we will compel a Performance of it as much as if the Award were Part of the Rule, and so a new Rule is needless. *Id. ib. in Marg.* Note, the constant Practice is to make the Rule at *Nisi prius* a Rule of the Court above, which is always granted on Motion. *Bac. Abr. 134.*

The Court was moved to make a Submission a Rule of Court, but denied, because the Affidavit set forth, that the Award was then made pursuant to the Submission, and the Award was then produced, and *Trevor*, Chief Justice, said, that since the Award was made, they would not make the Submission a Rule of Court without seeing the Award, whether it was a good and legal one. *3 Vin. Abr. 133. pl. 12.*

III. To engage Persons of Rank and Fortune in Trade, that industrious Nation the *Burgundians* procured the Association or Incorporation by *John Duke of Brabant*, of that ancient Company of the Adventurers, anno 1248. which were then called the Brotherhood of *St. Thomas Becket of Canterbury*, which being afterwards translated into *England*, was by *Edward the Third* confirmed, and by his Successors *Henry the Fourth*, *Henry the Fifth*, *Edward the Fourth*, *Henry the Sixth*, *Richard the Third*, and King *Henry the Seventh*, who gave them the Name of Mer-

chant-Adventurers, and from him successively hath their Charter been confirmed down to, and by his late sacred Majesty King George the Second; and as this Society is of ancient Estimation, so is their Government very commendable.

IV. The Society of the Company trading to the *East-Indies*, differs from others, both as in reference to the Persons and Members, which are at this Day many of the principal Nobility of *England*, as also for that their Adventurers run all into many Stocks, and is governed and carried on jointly upon Benefit and Loss; they were incorporate, anno 1599. and since they surrendered their Charter, and accepted a new one, and are incorporated by the Name of *Governor and Company trading to the East Indies*; their Adventurers run all into one *general Stock*, and is governed and carried on upon Benefit and Loss; the same being at this Day, according to the Subscriptions, about * four hundred thousand Pounds, which the several Persons subscribers may sell, transfer, and dispose of; but they can no ways take out the same: The *Great Stock* may be increased, if the Company shall see Occasion to permit it; but they are very cautious of the same, for that the greater the Dividends (1), the more Reputation the Stock bears, which above all things is to be maintained; however, directly upon his own Account, no Person can have above Ten thousand Pound Stock there, nor can he have a compleat Title, till he is made a Freeman of that Society; their Returns are very profitable, and of late very rich, and have many Places of great Importance in *India*, as *Masulapatan* on the Coast of *Coromandel*, *Bombay*, *Surat*, *Fort St. George*, *Bantam*, &c.

See

* Abundance more at this Time, under *The United Company*. What is said in this Paragraph of the Stock relates to the old Company.
(1) See *Stat. 7. Geo. 3. c. 49. Sect. 2. in B. 2. c. 11. Sect. 15.*

See Stat. 7 Geo. 3. c. 57. whereby the *East-India* Company is to pay the Government the Sum of eight hundred thousand Pounds, in Respect of the territorial Acquisitions and Revenues lately obtained in the *East-Indies*.

V. The *Dutch* having found Relief in their Distress from the *British* Shore against their powerful Enemy, found also a Pattern to carry on Commerce; they not being wanting in the imitating the Incorporation of a Company, trading to those Places which they possessed in the *East-Indies*; and therefore in the Year 1602, Leave was granted from the *States* to traffick into those Parts before all others, during the Space of one and twenty Years, the which was granted them, in Consideration of five and twenty thousand Florins, which they promised to pay to the *States* during the first ten Years. Thus reduced all into one Company, *Amsterdam* had one Moiety, *Middleburgh* in *Zealand* a fourth Part, *Delft*, *Rotterdam*, *Horne*, and *Enchuyzen*, had each of them a sixteenth Part, the whole Stock of this Union amounting to upwards of six Millions of Livres, or six hundred thousand Pounds Sterling.

For the Direction of this Trade, and the Interests of the Associates, they have established in either of those Towns, a certain Number of Administrators, at *Amsterdam* twenty, at *Middleburgh* twelve, in either of the rest seven; and if any one dies, the Chamber of the Place names three, of which either the *States-General*, or the Magistrate of the Town chuseth one.

Those Chambers chuse seventeen among the Administrators, that is to say, *Amsterdam* eight, *Middleburgh* four, *Delft* and *Rotterdam* two,

two, *Horne* and *Enchuyssen* two; and the seven-teen are chosen alternatively, sometimes at *Middleburgh*, sometimes at *North-Holland*; the which are called together to resolve jointly of how many Ships and of what Equipage and Furniture they shall make the Fleet, which they mean to send, and to what Port of Coast they should go. This Assembly is held six Years together at *Amsterdam*, and afterwards two Years at *Middleburgh*, and then again at *Amsterdam*; by the Conditions of the Accord the Ships must return to the same Port from which they parted; and the Spices which are left at *Middleburgh*, and other Chambers, are distributed amongst them by the Weight of *Amsterdam*, and the Chamber which hath sold her Spices, may buy from other Chambers.

• There are now some Variations,

By this Order • they have hitherto continued this Commerce with Reputation, not as simple Merchants only, but as if they were Sovereigns, they have made in the Names of the *States*, Alliances with many of the Princes of those Parts; as with the Kings of *Siam*, *Quadoen*, *Patani*, *Jabor*, the Heir of *Malaca*, *Borneo*, *Acbin*, *Sumatra*, *Batavia*, *Jodra*, and other Kings of *Java*; they have made themselves absolute Masters of the Island of *Amboyna*, but by what Means?—Where they have a President who governs in their Name; at *Banda* they have a Fort for a Retreat, where they must deliver the Spices at a certain Price; in *Ternate* they have another a Mile distant from that of the *Portuguese*; at *Magienne* they have three; at *Molire* one; at *Gilolo* they have taken that which the *Portuguese* had built; and indeed whatsoever either can, or may consist with their Interest in

in those Parts, they have ingrossed, and by that means almost the Trade of the whole Spices of the *East*.

VI. So likewise the most Christian King hath within few Years established such another trading to those *Eastern* Parts.

And in *England* we have several others, as that of trading to *Turkey*, that of *Africa* to *Guiney*, and several others, dividing the several Trades according to the Coasts and Places where they are appointed, forbidding them to intrench or incroach on each other; so likewise to all other his Majesty's Subjects on severe Penalties.

VII. Now it is not the dividing of the Trade into Companies that can answer the Expectation, but it is the dividing the Trade into Companies, where the Places may bear it; as that to the *Indies*, *Turkey*, *Hamborough*, and some others: But to some others, as the *Canaries*, *France*, or any of those Places on this Side the Line, it has been conceived the Trade will not answer it, but the same would be better distributed, either into the Trade of voluntary Associations, or single Traders; others perhaps would result into Monopolies, if incorporated; however, the Standard Rule is, to know whether the Trade of the Place will bear a Company, or not.

The *Hudson's Bay* Company made a By-Law, that if any of their Members should be indebted to the Company, his Stock in the Company should be in the first Place liable to such Debt, and that they might seize and detain it. This was held good in *Chancery*.

It is foreign Trade that is the main Sheet Anchor of us Islanders, without which the Genius of all our useful Studies, and the
which

which renders Men famous and renowned, would make them useleſs and insignificant to the Publick. When Man has fathomed the Bottom of all Knowledge, what is it, if not reduced to Practice, other than empty Notion? If the Inhabitants of this Iſland were learned in all the Languages between the riſing and ſetting of the Sun, did know and underſtand the Situation of all Places, Ports, and Countries, and the Nature of all Merchandize and Commodities, were acquainted with the Order and Motion of all the Stars, knew how to take the Latitude and Longitude, and were perfectly read in the Art of Navigation, to what Purpose would all be, if there were no Foreign Trade? We ſhould have no Ships to navigate to thoſe Countries, nor Occaſion to make uſe of thoſe Languages, nor to make uſe of thoſe Commodities; what would this Iſland be without Foreign Trade, but a Place of Confinement to the Inhabitants, who (without it) could be but a kind of Hermits, as being ſeparated from the reſt of the World; it is Foreign Trade that renders us rich, honourable and great, that gives us a Name and Eſteem in the World, that makes us Maſters of the Treasures of other Nations and Countries, and begets and maintains our Ships and Seamen, the Walls and Bulwarks of our Country; and were it not for Foreign Trade, what would become of the Revenue for Cuſtoms, and what would the Rents of our Lands be? The Cuſtom would totally fail, and our Gentlemen's Rents of Thouſands *per Annum*, would dwindle into Hundreds.

VIII. Merchants in *England* were always favourably provided for by the *Common Law* of
of

Les avantages de Commerce à la Eaſt-India.

of this Kingdom. By the ancient Laws of King Alfred it was provided, *Defendue fuit que nul Merchant-Alien ne banrafr Angleterre, forsque aur quarter Faires, ne que nul demeuraft in la terre outer quarante jours: Mercatorum navigia, vel inimicorum quidem quæcunque ex alto (nullis jactata tempeftatibus) in portum aliquem inveniuntur tranquilla pæce fruuntur, quinetiam fi maris acta fluctibus, ad domicilium aliquod illufre, ac pacis beneficio donatum navis appulerit inimica, atque iftuc nautæ confugerunt, ipfi & res illorum omnes augufta pace potiuntur.* *Mirour, cap. 1. Sec. 3. Intr. leges Etbel. cap. 2.*

IX. Again, by the Grand Charter of our Liberties, they are provided for in thefe Words: *Omnes Mercatores nifi publicè antea prohibiti fuerint, habeant falvum & fecurum conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram, quàm per aquam, ad emendum vel vendendum fine omnibus malis tolertis per antiquas, & reftas confuetudines, præterquam in tempore guerræ. Et fi fint de terra contra nos guerrina & tales inveniuntur in terra noftra in principio guerræ, attachiantur fine damno corporum fuorum, vel rerum, donec fciatur a nobis, vel a Capitali Jufticiario noftro, quomodo Mercatores terræ noftræ tractantur, qui nunc inveniuntur in terra illa contra nos guerrina; et fi noftri falvi fint ibi, alii falvi fint in terra noftra.* *Magna Charta, cap. 30.*

1. By which it is declared, that all Merchant-Strangers might be publickly prohibited to trade into this Realm, be they in Amity or otherwife.

2. All Merchant-Strangers in Amity, except fuch as be fo publickly prohibited, fhall have fafe and fure Conduct in feven things.

Addit Canon, Mercatores, quod non tantum de his qui temporarium in hostica mercam agitant, intelligendum est, sed ut de subditis perpetuis; nam &

horum vita ab armis aliena: Est ac sub hoc nomine continentur simul abt opifices & artifices quorum questus pacem amat, non bellum. Grotius de Jure belli, lib. 3. cap. 11. § 12.

1. To depart out of
 2. To come into
 3. To tarry in
 4. By Water and Land to go in, and through
 5. To buy and sell.
 6. Without any manner of evil Tolls.
 7. By old and rightful Customs.
- } *England.*

• That is, the Keeper of the Realm in his Absence.
Et in Republica maxime conservanda sunt jura Belli. Co. 2. Instit. fol. 58.

Rot. Parliam. 18 E. 1. fol. 4. num. 55.

Rot. Vascot. 18 Ed. 2. m. 21.

X. But concerning such Merchant-Strangers, whose Prince is in War with the Crown of *England*, if they are found within the Realm, at the Beginning of the War, they shall be attached, with a Privilege and Limitation, *i. e.* without Harm of Body or Goods; with this Limitation, until it be known to the King, or his Chief Justice*, how Merchants of *England* are used and intreated in their Country, and accordingly they shall be used in *England*, the same being *Jus Belli*. But for Merchant-Strangers that come into the Realm after War begun, they may be dealt withal as open Enemies, it being the Policy of *England* ever to entertain Merchant-Strangers fairly. In the 18th Year of *Ed. 1.* in the Parliament Roll, it is contained thus: *Cives London petunt quod alienigeni Mercatores expellantur a Civitate; quia dicantur ad depauperationem Civium, &c. Responso—Rex intendit quod Mercatores extranei sunt idonei & utiles magnatibus, &c. & non habet Concilium eos expellendi.*

However, though great Immunities were granted them, yet they always found Sureties that they should not carry out the Merchandize which they brought in.

XI. And

XI. And at this Day *, if they bring in any Merchandize into the Realm, and sell the same for Monies, they are to bestow the same upon other Merchandizes of *England*, without carrying of any Gold or Silver in Coin, Plate or Maſs out, on Forfeiture; the principal Reason of this was, as well to preserve and keep the Gold and Silver within the Realm, as for the Increase of the Manufactures; and the same at this Day extends as well to Denizens, so made by Letters Patents, as Strangers; however, he may use the same in Payment to the King's Liege People, without incurring the Penalty of the Statute of 4 H. 4. but yet in Strictness of Law, ought not to receive * any Gold in Payment.

* The Law is altered as to this Matter, since our Author wrote. See above, lib. 2. ch. 13. §. 10.

4 H. 4. cap. 5.
5 H. 4. cap. 9.

† Stat. 17. E. 4. c. 1. confirmed by 3 H. 7. c. 8.
* 8. H. 6. c. 14.

XII. All Merchant-Strangers that shall be made Denizens, either by the King's Letters Patents, or by Act of Parliament, must pay for their Merchandize like Custom and Subsidy, as they ought, or should pay before they were made Denizens.

11 H. 7. c. 14.
22 H. 8. c. 8.
1 Eliz. cap. 1.
Co. 2. Inst. fol. 742.
Leg. unic. Cod. de mund. &

XIII. Every one that buys and sells is not from thence to be denominated a *Merchant*, but only he who trafficks in the way of Commerce, by Importation or Exportation; or otherwise in the way of Emption, Vendition, Barter, Permutation, or Exchange, and which makes it his Living to buy and sell, and that by a continued Affiduity, or frequent Negotiation in the Mystery of *Merchandizing*: But those that buy Goods to reduce them by their own Art or Industry into other Forms than formerly they were of, are properly called Artificers, not Merchants: Not but Merchants may and do alter Commodities after they have bought them for the more expedite Sale of them, but that renders them not Artificers, but

Alceat. in Leg. mercis 66. & 207. de verb. signif.

C. ejicicus 88.

Paul de Cass.
in Leg. cum ff.
de Inst.

but the same is part of the Mystery of Merchants; but Persons buying Commodities, though they alter not the Form, yet if they are such as sell the same at future Days of Payment for greater Price than they cost them, they are not properly called *Merchants*, but are *Usurers*, though they obtain several other Names, as *Warehouse-keepers*, and the like; but Bankers, and such as deal by Exchange, are properly called *Merchants*.

31 E. 3. 7. Co.
on Little. fol.
182. per Legem mercatoriam jus accrescendi inter Mercatores pro beneficio commercii locum non habet.

XIV. The Wares, Merchandizes, Debts or Duties that Merchants have as joint Traders or Partners, shall not go to the Survivor, but shall go to the Executor of him that is deceased (a). And the Executor may join in an Action with the surviving Merchant, 2 Levinz 188. *Hall against Hufsam*.

(a) *Sed Quare*, for it hath been since held, that the Executor and Survivor cannot join, for the Remedy survives, though the Duty doth not; and therefore on Recovery he must be accountable to the Executor for that. *Martin v. Crump*. Salk. 414.

1 Vern. 217. In Copartnerships between Merchants, it is not necessary to provide against Survivorship.

If two joint Merchants occupy their Stock, Goods and Merchandize in common to their common Profit, one of them naming himself a Merchant, shall have an Account against the other, naming him a Merchant; and shall charge him as *Receptor* * *denariorum ipsius B. ex quacunque causa & contractu, ad communem utilitatem ipsorum A. & B. provenient. sicut per Legem Mercatoriam rationabiliter monstrare poterit*, 10 H. 7. 16. a.

* Co. Litt.
172. lib. Instat. 17, 18,
19.
F. N. B.
117. D.

Ld. Raymond
340.

So where there are two joint Merchants, and one of them dies, the other shall have Account against their Factor, without the joining of the Executor of the Deceased.

If

If there be several Owners of a Ship, and they fall out, the Ship notwithstanding this Variance may make one Voyage upon their common Charge and Adventure, before such time as they shall be so much as heard to dissolve the Partnership; but if after that they cannot agree, he who desires to be free, is to offer to the rest his Part, at a Price as he will either give or take; which if he will not do, and yet refuses to set the Ship forth with the rest of the Owners or Partners, then may rig the Ship at their own Charge, and upon the Adventure of the Refuser, so far as his Part doth extend, without any Account to be made unto him of any part of the Profit at her Return. But they are bound to bring her home safe, or to answer him the Value of his Part. But if the Persons Partners, who have the greatest Share or Part of the Ship, refuse to continue the Partnership, with one who hath but one Part, or a small Share in the Ship, who cannot sell or part with his Part at a Price set, without great Loss, nor is of Ability to buy their Parts, then are they all bound to put the Ship to an Appraisement; and so dispose of her by Sale, or setting her forth on the Voyage according to such Appraisement. And if for want of Buyers, the poor Partner can neither avoid the Oppression of the richer, nor yet the Rich satisfy the poor Man, who also may be obstinate and wilful, then may the Judge of the *Admiralty* sentence or decree the same, as he may do in *Omnibus aliis bonæ fidei Actionibus*. *Lex Mercat.* 120, 121.

In an Action upon the Case against *A.* the Plaintiff declares upon the Custom between one when two Merchants, &c. that if two Merchants are promised, found in Arrear upon an Account, and they

Lex Oleron,
Partners of a
Ship disagree.

Action against
one when two
promised.

promise to pay it at certain Days, that any or either of them may be charged for the whole singly; and then shewed the Account, that *A.* and *B.* were found in Arrear so much, &c. and promised to pay it at certain Days, but did not, and the Plaintiff brought an Action against *A.* only and resolved that it lay. 2 *Rolls Abr.* 702, 703.

Salk. 126.

If two Merchants have a joint Trade, and one of them accept a Bill of Exchange, if he do not pay it, an Action lies against the other, *per Twissden*, *Styles* 370. but rather against both.

Martin v.
Bours. Cr.
Ja. 7.

XV. And as the Law establishes Security for their Estates, so it gives them other Immunities in their Commerce; for if one Merchant draws a Bill of Exchange upon another, be it In-Land or Out-Land, (if it be by way of Exchange) the Acceptance of the Bill by the Party shall bind him to that Party, to whose Use the Money in the Bill is to be paid, and he may bring his Action in his own Name, *per Legem Mercatoriam*.

Vide tit. Ex-
change.

Lutw. 891. b.

And so it is, if a third Person, that is a Stranger to the Bill, shall accept the same for the Honour of the Drawer, it shall bind him as effectually, as if he, upon whom the Bill was drawn, had accepted it; and this by the Custom of Merchants.

Ld. Raymond
281.

And Courts of Law will take notice of general Customs among them, without being pleaded; as that there is no Right of Survivorship, &c. but not of Special Customs.

Merchandize is so universal and extensive, that it is in a manner impossible, that the Municipal Laws of any one Realm should be sufficient for the ordering of Affairs and Traffick relating to Merchants. The Law concerning

cerning Merchants is called the Law Merchant from its universal Concern, whereof all Nations do take special Knowledge, and the Common and Statute Laws of *England* take notice of the Law Merchant, and leave the Causes of Merchants in many Instances to their own peculiar Law. As in the 13 *Ed.* 4. 9, 10. A Merchant-Stranger made Suit before the King's Privy Council, for certain Bails of Silk feloniously taken from him, wherein it was moved, that this Matter should be determined at Common Law; but the Lord Chancellor answered, that this Suit is brought by a Merchant, who is not bound to sue according to the Law of the Land, nor to tarry the Trial of twelve Men. And it was there likewise resolved by all the Justices, that if the Merchandizes of such a Merchant-Stranger be stolen and waved by a Felon, the King himself shall not have them as Waifs; otherwise of the Goods of a common Person. *Vid.* 27 *Ed.* 3. *cap.* 20.

In War, Merchants in an Enemy's Country are privileged from any Violence to be offered them, *Grot. de Jure belli & pacis, lib.* 2. *cap.* 11. *sect.* 12.

There are likewise (for the Accommodation of Commerce and Traffick) in all Countries, privileged Ships and Boats serving the Country or the Prince; which have great Prerogatives of being free of Imposts and Customs, and not subject to Arrests. And all Ships are subject to this Service upon Command, and if they refuse, the Ships are forfeited, by the Law Maritime, *Lex Mercat.* 110, 111.

If a Merchant commit any Offence, for which he is to be amerced, this Amercement shall be *Salva Merchandiza sua*. For that

Trade and Traffick is the Livelihood of a Merchant, and the Life of the Commonwealth, wherein the King and every Subject hath an Interest. *Magna Charta, cap. 14. 2 Inst. 28.*

By the Statute of the 5 H. 4. cap. 7. Merchants Alien shall be used in this Realm as Denizens be in others.

To call a Merchant Alien Bankrupt is actionable. *Tarboot cont. Morrifon. Tel. 198. 1 Bulst. 134.*

A Man delivered Kersies to be sold in *Spain*, the Factor sells to one who becomes a Bankrupt, and it is a Law in *Spain*, that if the Factor enter it before a Register, and had a Testimonial that he shall be discharged. And the Court said we will judge here, that he shall be discharged. *2 Rolls Rep. 497. Caps and Tucker.*

Debt upon a Bill by a Merchant to pay Foreign Coin amounting to so much, to be paid upon the Feast of the Purification called *Candlemas-day*. Upon *non est factum* pleaded, *Verdict* for the Plaintiff. Moved in Arrest of Judgment, that the Declaration was not good, because Payment at *Candlemas* is not known in our Law; yet the Judgment was affirmed, for that amongst Merchants such Payment is known to be on the 20th of *February*, and the Judges ought to take notice of it, being used among Merchants, for the Maintenance of Traffick, *Tel. 135. 1 Brow. 103. Pernifon and Pountney's Case.*

*Dyer 296,
375.*

XVI. All other Subjects are restrained to depart the Realm, to live out of the Realm and out of the King's Obedience, if the King so thinks fit; but Merchants are not, for they may depart, and the same is no Contempt,

tempt, they being excepted out of the Statute of 5 R. 2. cap. 2. And by the *Common Law* they might pass the Seas without Licence, though not to merchandize.

XVII. It was once conceived, that those Laws, which were prohibitory against Foreign Goods, did not bind a Merchant-Stranger; but it was ruled otherwise: For in the Leagues that are now established between Nation and Nation, the Laws of either Kingdom are excepted; and therefore as the *English* in *France*, or in any other Nation in Amity, ^{19 H. 7.} are subject to the Laws of that Country where *Tomlinson qui* they reside; so must they of *France*, or any ^{iam vers.} other Country be subject to the Laws of *Eng-* ^{Henry de Vale.} *land*, when Resident here; and therefore if a ^{Pasch.} *Frenchman* imports any Points, Laces, Belts, ^{36 Eliz. in} Hats, and the like, they are forfeited. ^{the Exchequer.}

XVIII. The marking of Goods is of a great Consequence, as in relation to the settling the Property of the Merchandize in the right Owner; and in Courts of Justice, both the *Civil Law* and the *Common Law* hath a great Respect to the same, therefore the Use has been, that every particular Merchant hath his particular Mark appropriated to him; by which means, if the Person is of any Value considerable, as in relation to Commerce, his Mark is presently known.

Every Merchant is to set down his Mark upon his Book of Accompt, wherewith his Commodities are marked; so Companies and Societies have their particular Mark: No Merchant ought to use another Mark, without Leave first had of the Party whose Mark the same is; for as Flags are the Ensigns that give Conufance of the Nation whose Ships they are, so Marks are to ascertain the Owners

The Cutters of London do give to each Member a particular Mark, which cannot be used or appropriated, without a particular Order and Leave of the Company

and Party, and
to other Com-
panies, 2 *Gro.*
fol. 471.

ers of their Property without Confusion or Damage: And though to set the Mark of another Man alters not the Property, yet it may work such a Detriment as may be very mischievous; and therefore by the *Common Law of England*, if *J. S.* shall maliciously set the Mark of *J. D.* upon his Goods, to the Intent *J. D.* shall or may be brought into any Trouble, or put to any Damage or Charge, an Action of the Case will lie against *J. S.*

Ld. Raymond
271. 3 *Salk.*
390.

The Property of Goods is in the Person to whom the Bill of Lading is consigned, and he may assign it over. But if the Bill be special, as to deliver to *A.* to the Use of *B.* the Property is in *B.*

CHAP. VIII.

Of Factors.

- I. *Factors, their Qualifications generally considered, in reference to their Employment.*
- II. *Of Commissions, and the Words in the same, that qualify them in their Employment.*
- III. *Of Commissions to Factors that limit their Actions.*
- IV. *Of a Factor that deals for several Merchants, of the Obligations that oblige, and not oblige, each other.*
- V. *Of their Power, considered in reference to the dispensing with the Debtors of their Principals.*
- VI. *Where the false Entry, or Unfaithfulness of the Factor subjects him to answer Damage to his Principal; and of the like committed by the Principal, where to answer to the Factor.*
- VII. *Of Goods remitted to Factors, and lost in their Possession who bears the Misfortune.*
- VIII. *Bills of Exchange drawn on the Factor by the Principal, and accepted, but before Day of Payment*

ment the Principal becomes Bankrupt, whether the same must be paid.

IX. Of Freight^{ing} of Ships by a Factor, where he is obliged to see the same discharged.

X. Of the general Rules to be used touching the Construction of their Actions.

I. **A** FACTOR is a Servant, created by a Merchant's Letters, and taketh a kind of Provision called Factorage, such Persons are bound to answer the Loss, which happens by over-passing or exceeding their Commission; but a simple Servant, or an Apprentice, can only incur his Master's Displeasure. The Spaniard hath a Proverb, *Quien passa Commission, pierde Provision*: He that exceeds his Commission, shall lose his Factorage. But Time and Experience hath taught them to know better Things; for now it is, *Subolca la paga*, His Purse must pay for it. The Gain of Factorage is certain, however the Success of the Voyage proves; and it is the Prudence of Merchants to chuse honest and industrious Persons, for otherwise the Factor may grow rich, and the Merchant poor, the first being sure of his Reward, the latter uncertain of his Gain.

II. In Commissions they now generally insert these Words: *Dispose, do, and deal therein, as if it were your own*; by which the Actions of the Factor are to be excused, though it turns to his Principal's Loss, because it shall be presumed he did it for the best, and according to his Discretion.

He is barely a Trustee for his Principal; therefore if his Principal, having Goods in his Hands, owes him Money by simple Contract, and then dies indebted by Specialty

more than his Assets are worth, the Factor cannot retain the Goods.

III. But bare Commission to a Factor, to sell and dispose, will not enable him to trust, or give further Day of Payment; for in the due Execution of his Authority, he ought on a Sale to receive *quid pro quo*, and as he delivers one to receive the other; for otherwise by that means, as they may trust six Months, they may trust sixteen Years: Nor by the Virtue of that Clause, of *doing as if it were their own*, may they trust out to an unreasonable Time, as ten or twenty Years instead of one, two or three Months, which is the customary Time for the like Commodities; and so it was adjudged, where one had remitted Jewels to his Factor in *Barbary*, who disposed of the same to *Mulleback* the Emperor, for a Sum certain to be paid at a time, which being elapsed, the Factor not obtaining it, was forced to make the same good to his Principal.

7 Jac. B. R.
Rot. 416. *Bar-*
ton & Sad-
docks. Bull. 1.
part. 103.
Yelv. 202. 2.
Mod. 100, 101

IV. Again, one and the same Factor may act for several Merchants, who must run the joint Risque of his Actions, though they are mere Strangers to one another; as if five Merchants shall remit to one Factor five distinct bales of Goods, and the Factor makes one joint Sale of them to one Man, who is to pay one Moiety down, and the other at six Months End; if the Vendee breaks before the second Payment, each Man must bear an equal Share of the Loss, and be contented to accept of their Dividend of the Money advanced.

Salk. 126.

But if such a Factor draws a Bill of Exchange upon all those five Merchants, and one of them accepts the same, the others shall

shall not be obliged to make good the Payment *Tamen quære de hoc.*

V. And as the Authority and Trust reposed in Factors is very great, so ought they to be provident in their Actions for the Benefit of their Principals; and therefore if Factors shall give Time to a Man for Payment of Monies contracted on Sale of their Principals Goods, and after the Time is elapsed, they shall sell Goods of their own to such Persons for ready Cash (leaving their Principals unreceived) and then such Man break, and become insolvent, the Factor in Equity and Honesty ought to make good the Losses, for they ought not to dispense with the Non-payment of their Principals Monies, after they become due, and procure Payment of their own to another Man's Loss; but by the Laws of *England* they cannot be compelled.

VI. Yet if Goods are remitted to a Factor, and upon Arrival he shall make a false Entry at the Custom-house, or land them without the Customer, whereby they shall incur a Seizure or Forfeiture, whatsoever the Principal is endamaged, he must inevitably make good, nor will such general Clause help him as above: But if a Factor makes his good Entry, according to the Envoice, or his Letter of Advice, and it falls out the same are mistaken, if the Goods shall be lost, yet the Factor is discharged.

And as Fidelity, Diligence and Honesty are expected from the Factor, so the Law requires the like from the Principal, judging the Act of one to be the Act of the other; and therefore if a Merchant shall remit counterfeit Jewels to his Factor, who sells and disposes them for valuable Considerations, as if

if they were right, if the Factor receives any Loss or Prejudice thereby, by Imprisonment, or other punishment, the Master shall not only make good the Damage to the Factor, but also render Satisfaction to the Party damaged: And so it was adjudged, where one *How* was possessed of three counterfeit Jewels, and having Factors in *Barbary*, and knowing one *Southern*, a Merchant, was Resident on the Place, consigns those Jewels to his Factor, who receiving them, intreated *Southern* to sell those Jewels for him, telling him that they were good Jewels; whereupon *Southern*, not knowing they were counterfeit, sold them to the King of *Barbary* for eight hundred Pounds (they being worth really but one hundred Pounds) and delivered the Money to the Factor, who remitted the same to *How*; the King of *Barbary* not long after finding himself cozened, committed *Southern* to Prison till he repaid the eight hundred Pounds. Whereupon *Southern* coming for *England*, brought his Action against *How*, and had Judgment to recover his Damage; for the Principal shall answer for his Factor in all Cases where he is privy to the Act or Wrong: And so it is in Contracts, if a Factor shall buy Goods on the Account of the Principal (especially if he has used so to do) the Contract of the Factor will oblige the Principal to a Performance of the Bargain.

2 *Rolls* 5.

2 *Cro.* 468.

Bridgman

126, 127.

Popham. 143,

not resolved

in that Book.

Soame's Case,

Goldstr. 137.

VII. When Factors have obtained a *Pro-venue* or Profit for their Principal, they must be careful how they dispose of the same, for without Commission or Order they must be responsible. Goods remitted to Factors ought in Honesty to be carefully preserved, for the Trust is great that is reposed; and there-

therefore a Factor robbed, in an Account brought against him by his Principal, the same shall discharge him *. And so it is, if a Factor buys Goods for his Principal, which afterwards happens to be damaged, the Principal must bear the Misfortune: But if a Factor shall dispose of the Goods of his Principal, and take Money that is false, he shall there make good the Loss; yet if he receives Monies, and afterwards the same is by Edict or Proclamation lessened in Value, the Merchant, and not the Factor, must there bear the Loss.

* *Southcote's Case, 4 Cok. 84.*

Again, in Letters of Credit, the Factor must be sure to see, whether the Commission is for a Time certain, or to such a Value, or not exceeding such a Sum, or general, in which he must have a careful Eye.

Where the Factor defrauds a State of the Customs, which is there a capital Crime in the Factor, and a Forfeiture of the Freight, he shall have the Benefit of the saving.

But if the Customs were due to our King, he is bound to discover them on a Bill brought.

VIII. A Merchant remits Goods to his Factor, and about a Month after draws a Bill on him, the Factor having Effects in his Hands, accepts the Bill, then the Principal breaks, against whom a Commission of Bankrupt is awarded, and the Goods in the Factor's Hands are seized; it has been conceived, the Factor must answer the Bill notwithstanding, and come in a Creditor for so much as he was enforced by reason of his Acceptance to pay.

Quere, If Equity may not relieve in such Case.

IX. If a Factor enters into a Charter-party with a Master for Freightment, the Contract obliges

obliges him; but if he lades aboard generally the Goods, the Principals and the Lading are made liable, and not the Factor for the Freightment.

The Principal orders his Factor, that as soon as he hath loaded (he having Monies in his Hand) to make an Assurance on the Ship and Goods, if the Ship happens to miscarry by the Custom of Merchants, he shall answer the same, if he hath neglected his Commission; so it is, if he having made an Assurance, and Loss hath occurred, he ought not to make a Composition without Orders from his Principal.

X. Generally the Actions of Factors do depend on Buying, Selling, Freightin, and all other the Heads that have been treated in the second Book, by which their Employment is universal in Matters Maritime and of Commerce; and the Questions which would arise touching the same, if treated on, would be *in infinitum*: However, these are to be the Standard Rules which should govern their Actions, *viz.* Honesty, Faithfulness, Diligence, and observing of Commission, or Instructions, which being considered, and weighed by those that shall be Judges of their Actions, a right Understanding and determining of the Matters arising between them and their Principals, would soon be attained.

But those sorts of Factors that have wanted those things, seldom or never render any other Account, but long and tedious Chancery-Suits, by which they not only have endamaged their very Trade, but seek to marry their Principals to a double Affliction, by obliging them to sue either a Beggar, or that which is worse, a naughty Man.

On

On the other hand, Factors, that behave themselves worthily and prudently in the Service of their Principals, ought, after their tedious Service, to be numbered amongst those that justly challenge that worthy Denomination of *Merchant*: And such was he who never made Breach of Commission in the Service of his Principal, but once; that was, when Wines were committed to him to dispose of, but the Price (by reason of a Glut) fell, Advice being given to the Principal of the same, who immediately in Passion writes to his Factor to take a Hammer and knock out the Heads; but the Factor considering (that Leave must be given to Losers to speak) knew better things, and kept the Goods, and sold them for their full Value; and when Accompts were to be made, instead of bringing to the Accompt of Wines, their Heads knocked out *per Order*, worthily brought *per contra*, sold at their intrinsic Value. Such faithful Ministers, I say, justly deserve that of our Saviour, *Well done*, &c. and to be no more called Factors, but Merchants.

C H A P. IX.

Of the Laws of Nature and of Nations.

- I. *Of the Variety and Contrariety of human Actions, and from whence they spring.*
- II. *Of the Difficulties that happen in the obstruding our Inquisition in finding that which is lawful.*
- III. *Human Laws from whence they flow, and wherefore the Laws of Nature are above ours.*
- IV. *No man naturally more a Judge than another of Nature's Laws.*
- V. *Nature's Laws are instituted for inward Goodness and Virtue, but State-laws for Quiet and Repose.*
- VI. *Of Punishment required by Kings against those that violate the Laws of Nature or Nations, though the same touch not them, nor their Subjects, and of punishing an Equal.*
- VII. *Of punishing an Equal, where that Right fails, and the Reasons of the same.*
- VIII. *Subjects ought not to seek Justice in the Territory of another Prince, but in their own, unless the Defendant become Fugitive.*
- IX. *Of Kingdoms equal in Power cannot be commanded, but entreated may be, to execute the Judgment of another by the Law of Nations.*
- X. *That such Power of executing the Judgments or Decrees of any Foreign Nation, extends not to those of Life or Honour.*
- XI. *Of executing the Judgments given in a Kingdom absolute, in another that is annexed by Conquest; and of the Difference of that, and one by Union.*
- XII. *Where that Right fails in Plantations, and the Reason of the same.*

I. **P**LAIN Reason shews us, that Natural and Mathematical Causes have more Certitude than Civil; for Nature is always uniform and alike in its Operations. Hence Fire always burns, and never wets; a
Stone

Stone in the Air naturally tends downwards, and never stays in the middle. In Mathematical Causes, ordinarily the Forms are such as have no middle interposed, as between even and odd there is no *medium participationis*; between a right Line and a crooked, there is no middle sort of Line; thus two and two always make four.

II. But civil and human Actions proceeding from a mutable and various Principal (the Will*) cannot always be alike or uniform: And besides the Will within, human Actions without, are subject to different Circumstances, and to infinite Encounters; by reason of which their excessive Number, they cannot be foreseen while Men are making Laws: Hence we may understand, wherefore it is said, *Omnis definitio in jure est periculosa*; and that *summum Jus* at some time may be found *summa Injuria*; as to render a Man his Sword, when he is actually mad, &c. And as Circumstance hath Power to change the Matter, so in the Form of the Action, it leaves in the middle a Latitude, sometimes inclining to one Extreme, sometimes to another.

For Example, betwixt that which by Precept we are commanded ever to do, and that which we are commanded never to do, is placed that which is lawful for us now and then to do, or not to do, in Matters of our own Right, so far as they seem expedient, or not expedient for us: Thus *Joseph* is called a just Man, because he thought of divorcing himself from *Mary*, though upon Circumstances he would not, &c. But that which perplexes us all here is, that this *licitum* leans sometimes more to the one hand, sometimes more to the other, sometimes more to that which

** In quid naturale fit spontandum in his quæ bene secundum naturam se habent, non in depravatis, Arist. Polit. l. 5.*

Non ideo id Deum velle, quia justum est, sed justum esse (that is due in Law) quia Deus voluit. Anaxarchus apud Plutarchum in Alexandro.

which is absolutely bad; from whence grow Scruples and Doubtings, whether in such Twilight we really participate more of Light than of Darkness; that is, more of Good than of Bad.

Vasqu' 11.
Controv. 54.
4.

Grotius de
Jure Belli ac
Pacis, l. 1.
c. 1. §. 14.

III. Human Laws grow most out of these middle things, *ex mediis licitis*; and upon right Examination we find, that a Man hath nothing else to dispose, for we (poor subordinate Vessels) cannot so much as deliberate *de absoluté debitis*, and *absoluté illicitis*, for they were in force before Man, Prince or People were in being, and God himself cannot now alter them, they flowing intrinsically, either from his Sanctity, Wisdom and Justice, as he is a Creator and Governor; or else they flow from Nature, whose Rule (according to God's making it by that which is in himself) is right Reason and Honesty. This Uprightness of Nature, together with that Obligation we have to be subject to it, was not a Moment after us, and therefore we could not determine any thing about it; for which Cause we have not a legislative Power to alter or diminish any of Nature's Laws.

IV. St. Paul tells us of those *who, without any After-knowledge of God's revealed Will or Laws to Man, were condemnable by those of Nature alone in the punishing the Breakers thereof*. No Man is naturally more a Magistrate than another, otherwise what meant Cain, when after his Murder he cried, *Who-soever shall find me, will kill me?*

V. And though human Laws remember us of those things, yet it is not as if they gave their original and primary Force of obliging; yea, Reason of State is not busied so much about inward Piety and Virtue, as it is about publick

publick Quiet and Repose, or those Actions which regard another Man's receiving right or wrong: And hence it is, that great Prodigality is not so severely punished as a little Robbery; and that *malus homo potest esse bonus Civis*, the Reason is, because though he may do himself Wrong in his own Rights, yet he may always do other Men right in theirs; neither is there any clear Reason, wherefore those lesser Sins and Impieties should be punished by any but God, who is wisest to know them, justest to weigh the Merit of them, and powerfullest to punish them.

This is the State of God's, and of Nature's Laws, to which we are all equally obliged; but our floating and circumstantiated Laws are only to give a Rule for an equal and mutual Community in Things, which God and Nature gave us to dispose of as we would ourselves.

VI. Hence it is, that Kings, and such as have equal Power with Kings, have a right to require Punishment, not only for Injuries committed against themselves or their Subjects, but for them also that do not peculiarly touch themselves; as where Persons commit Actions in Violation of the Law of Nature or of Nations, for the Liberty by Punishments to provide for human Society (as hath been already mentioned) was in the Hand of every Man; but after Commonwealths and Courts of Justice were ordained, it resided in the Hands of the highest Powers, not properly as they are over others, *but as they are under none*: For Subjection to others has taken away that Right; yea, so much more honest it is to vindicate other Men's Injuries than our own, by how much more it is to be feared, that a Man in his own, by two deep a Resentment,

Grotius de Jure Belli ac Pacis, lib. 2. cap. 21.

ment, may either exceed a Measure, or at least infect his Mind; however, this Right of punishing an Equal remains still in those Places where the People remain as in great Families, and not in Cities, or under some Government; and therefore those that have now Possessions of any Parts of the New World, or *American Isles*, till they have either voluntarily submitted to a Government, or put them and their Discovery into the Hands or Protection of some Prince that may exercise Power, there remains the old and natural Right of punishing for Offences: So likewise where Persons shall be assaulted by Pirates on the Seas, if they be overcome, they may be immediately executed by the Law of Nature; for otherwise there would be a Failure of Power to punish such: Besides, the old natural Liberty remains in all Places where are no Judgments; so where they are taken and brought to a Port, and the Judge openly refuses the Trial of them, or that the Trial of them cannot be had, without an apparent Detriment and Loss to the Captors, Justice may be done upon them by the Law of Nature.

Vide Chap. Piracy, §. 11, 12.

Leg. extant. D. quod metui.

VII. Two Pirates resolving to assault and rob the next Vessel they meet with, (not knowing each other's Condition or Design) encounter, and the one happens to be overcome by the other; the Question is now, whether the above-mentioned Right so far remains, as that the stronger may execute him whom he hath overcome: Right Reason dictates, that the Evil-doer may be punished, not who should punish him; but that Nature sufficiently sheweth, that it is most convenient to be done by him that is superior; yet doth it not demonstrate this to be necessary, except superior

*Qui non reddit
faciendo quod
debet, reddit
patiendū quod
debet, Philo.
Peccare dum
festinatis, ad
pœnas ferendas
festinatis.*

rior be taken in that Sense, that the Evil-doer be thought to have made himself thereby inferior to any other, and to have it as it were degraded himself from the Order of Men into the Number of Beasts subject to no Man, and such are Pirates, who have no other Denomination but Night-wolves, or Beasts of Prey. By Nature it is ordained, *That the better command the worse*: And Aristotle saith, *The worse are provided for the Use of the better, as well in Naturals as in Artificials.* *Arist. 7. Pol. 14.* It follows hence, that at least a guilty Person ought not to be punished by another equally guilty, to which Purpose is that Saying of Christ, *Whosoever of you is without Sin (that is such Sin) let him throw the first Stone.* Pertinent is that saying, *The Sentence can have no Authority, where he that judgeth is to be condemned*: From whence it follows, that the right of punishing in such Case, at such time ceases.

VIII. On the other hand, Subjects that have just Cause of Action, and inhabit under their own Sovereign, ought not to wave his Justice, and fly into the Territory of another, but ought to seek it in their own, unless the Defendant becomes Fugitive. One *Richard Hieron* being a Merchant of *London*, and Liege-man of the King, and born in *England*, commenced a Suit against *J. Walden* Major of the Staple of *Calis*, and other Merchants of the Staple, and caused them to be arrested in *Flanders* in the Court of the Duke of *Burgundy*, held in *Bruges*, for certain Injuries supposed by them to be made within the Jurisdiction of the King of *England* at *Calis*, and after the Defendants did appeal to the Parliament at *Paris*, and were there dismissed by a Judicial Sentence, for that they had no Cog-

Rot. Parl.
17 E. 3. num.
26. cited in
RollsAbridg-
ment tit. Pre-
rogative, fol.
176.

nizance or Ground to inquire or examine Matters committed within the Jurisdiction of the King of *England*, and by his Subjects there inhabiting in a Foreign Court; the Record does make mention, that this was an Act so derogating from the Law, and of so high a Contempt, that it was enacted, "*Que brief de Proclamation issera, luy commandant a surceasar son dit action, Et que s'il ni apres fue les dits Defendants hors del Realm d'Angleterre per ascun matter determinable*", under the Jurisdiction and obedience of the King of *England*, *qu'on il ad jurisdiction*. The Judgment given—*donque il serra, &c.* he shall be put out of the Protection of the King of *England*, and forfeit all his Lands, Tenements, Goods and Chattles, and that no Pardon shall be to him available.

IX. Yet Kingdoms which are equal in Power, and having no Dependance on each other, cannot be commanded nor corrected of another; but if there be a Question, to execute the Decree or Judgment of one in the Territory of the other, there may issue forth a Commission of Entreaty under the Seal of that Court where the Judgment was given, or at least under the Great Seal of the Prince, directed to the Judges in that Place where the Defendant is resident, and the Judge to whom the said Commission is directed may award Execution, according to the Laws of Nations: And so it was adjudged, where one having recovered a Debt before the Governor of *Friesland*, the Defendant upon that fled for *England*, the Governor, at the Request of the Plaintiff, issued forth his Commission of Request, directed *Omnibus Magistratibus infra Regnum Angliæ, rogans*, to make
Execu-

Ro. Ab. 530.
Lev. 267.
Sid. 418.
Ven. 32.
2 Keb. 511,
610.

Execution of the said Judgment; upon which the Judge of the Admiralty in *England* issued forth an Execution of that Sentence, and the Defendant was taken, upon which he brought his *Habeas Corpus*, and adjudged the Sentence well executed by the Laws of Nations, and according to the *Common Law* of this Realm. *v. Lord Raymond's Rep.* 935. 936.

So likewise, if a *Dutchman* takes up Goods at the Port of *London*, and gives a Note under his Hand for the Payment of the same, and then flies into *Holland*, the Vendor may apply himself to the *Lord-Mayor of London*; and upon Proof of the Delivery, and the Sale of the Goods, the *Lord-Mayor* making a Certificate of the same, and sending it under the City-Seal, directed, as above, they of *Holland* will and do execute the same upon the Party.

Herein this last Case differs from the first; for by the former, if there should fall a Question about the Interpretation of the Judgment or Sentence, the same cannot be done, for they are not to examine the same; and the Reason is, lest the Stranger be induced at another time to do the like, and so dissolve the Judgments whereof they should demand the Execution, the which would be done more through Jealousy of the State, than for any Injustice in them: Besides, the Judgments or Sentences, which are Matters of Record, and of the greatest Security in a Kingdom, the Presumption that they were justly given, shall always be understood.

X. But in the latter, the same may be examined, that is, the Merchant may be heard as to his legal Defence, either to the lessening or discharging the Debt or Damage, but against the Testimony certified, no Objection

can be made, but the same is admitted, as legally proved.

But if there be a Question of Honour or Life, there they may not execute the Judgments of foreign Judges, especially if they have not known the Merit of the Causes, or seen the Informations, or heard the Witnesses; but more especially in *England*, for there can in no respect whatsoever the Life of a Man (let his Offence be never so heinous) be brought to Punishment without a legal Trial,

* *Cok. 4. In-
fit. fol. 38.*

* and that by the producing of Witnesses *visa voce* to his Face; yet Princes for the Respect they bear each other, and for the good of Justice, though they cannot at the bare Request of the Judges of another Prince put them to Death; yet they may for exemplary Punishments (which ought to be made upon the Places where the Fact was committed) yield the natural Subject to his natural Prince, unless the Prince, to whom the Fugitive is fled, finds that he is unjustly pursued; for in such Cases he is not bound to yield them; yea, he is forbidden by the Law of God to restore a Bond-man, which is fled into another Man's House to avoid the Fury of his Master.

*Soto de Just.
& Jure, l. 5.
qu. 1. Art. 7.
Satiùs judica-
mus esse paucos
aliquos mala
ferre, quam
immensam
multitudinem,
Zonaras.*

XI. And as the same is in Cases Foreign, so likewise in those Estates that are under the *Crown of England*; and therefore if a Man recovers against * *J. S.* in the *King's Bench* in *England*, and then the Defendant flies over into *Ireland*, the Judgment may be certified over into the *Chancery* in *Ireland*, and they may by *Mittimus* send it into the *King's Bench* there, and they may award Execution, or otherwise the Party may bring his Action of Debt on the same; so the like has been done for Decrees given in the *Chancery* in *England*,
which

* *Pasch. 24.
Car. 2. in B. R.
in Hibern. in-
ter Warde and
Moor.*

which have been exemplified under the Great Seal, directed to the King's Lieutenant, for the putting the same in Execution there; but in no Case a Judgment given in *England* may be certified over under any other Seal but that of the Great one.

But in *Scotland* it is otherwise; for that is a Kingdom absolute, and not like *Ireland*, which is a Crown annexed by *Conquest*, but the other is by Union; and tho' they be united under one Prince *ad fidem*, yet their Laws are distinct, so as if they had never been united; and therefore the Execution of the Judgments in each other, must be done upon Request, as above, and that according to the Laws of Nations.

Vide the Act of Parliament for the Union of England and Scotland.

XII. But *Colonies* or *Plantations*, which are reduced into the Condition of great Families, have not this Right of Requesting, for they are governed by the Laws * prescribed by the Sovereign of the same, who may set Jurisdiction, and make them Places privileged, not to have the Persons attached or arrested in any other Places, but within their own Bounds, so likewise upon their first forming or Institution, may so declare, that for any Debt or Contract made or done in any Place but in that of the same *Plantation*, they shall not be impleaded; and therefore in *Virginia* at this Day, if a Man contracts a Debt in *England*, and flies to the same, he cannot be there impleaded: But if a Man takes up Goods, and carries the same over thither, there may be sued in the Place; so likewise if it can be proved he carried over the Money borrowed, and this amongst others of the Laws and Constitutions of those *Plantations*, is preserved inviolably, the same being as it

* See *Contrab.* 2. P. W. 75. *Englishmen* carry their Laws with them.

were a Pledge and general Safety, which is given to those Inhabitants that shall resort thither, and there plant themselves for the Good of the Place; and although those that thither fly, by reason of great and unrepairable Losses, have contracted Debts far beyond their Ability to satisfy, a Failure of which in Strictness of Law, may (if the Creditor pleases) oblige their Bodies to Imprisonment; yet doth it not thence follow, that the same ought to be exacted; for though the Body of Man may gratify the Revenge of the Creditor, yet it never can pay the Debt; wherefore if those Ends by themselves in a moral Estimation be not necessary, or if other Ends on the opposite Part occur, not less profitable or necessary, or if the Ends proposed by Imprisonment may be attained any other way, it will then follow, that if there be nothing of Obligation on the Debtor's Part, to render himself a Prisoner to the Creditor, that then if the same can or may be avoided by flight, the same in Conscience may be done, according to that of Cicero, *Ad Quintum Trah. 1. 21.* *It was not fit perhaps to dismiss him being brought to Judgment, but that he should be inquired after, and brought to Judgment, was not necessary.*

By Stat. 6 Geo. III. c. 12. It is enacted, that the Colonies and Plantations in *America* are dependent upon the Crown of *Great Britain*, and that the Parliament hath full Power and Authority to make Laws of sufficient Validity to bind the Colonies, and People of *America*, Subjects of the Crown of *Great Britain*, in all Cases whatsoever.

A T A B L E

A
T A B L E
O F T H E
P R I N C I P A L M A T T E R S.

Book Chap. §.

ABJURATION. See *Exile*.
Acceptance. See *Bills of Exchange*.

Accessory.

- | | | | | |
|---|---|---|---|----|
| 1. <i>Accessories</i> to Piracy, when to be punished as | } | I | 4 | 24 |
| Principals, or not, | } | I | 4 | 30 |

Admiral and Admiralty. See *Dominion of the Sea, Flag, Mariners, Pirates, Privateers, Prizes, Re-prizals, Ship-wreck.*

- | | | | |
|--|---|----------|------|
| 1. When entitled to the eighth Part of a Prize, | 2 | 6 | 17 |
| 2. What goods are to be deemed contraband, or not, | I | I | 24 |
| 3. The Admiralty shall try, whether a Ship be Prize or not, | } | I | 2 21 |
| 4. Where the <i>Jurisdiction</i> is concurrent, <i>B. R.</i> ought to be well informed before they discharge a Person suspected of <i>Piracy</i> . What Regard had to <i>Sentence</i> there, | } | I | 4 32 |
| 5. A <i>Warrant</i> of the <i>Admiralty</i> , a good <i>Justification</i> , &c. | } | I | 4 32 |
| 6. <i>Prohibition</i> to them for not allowing Plea of <i>Statute of Limitations</i> , | } | I | 4 32 |
| 7. Has a Power to <i>impress</i> Ships for Service, | } | I | 6 I |
| | } | to Sect. | 5 |
| 8. May <i>impress</i> Seamen, and why, | } | I | 6 5 |
| | } | to Sect. | 10 |
| 9. Why the Admiral has a Power of impressing Ships, | I | 6 | 5 |
| | | | 10. |

THE TABLE.

	B.	Ch.	§.
10. Where the Trial of Contracts, &c. shall be in the <i>Admiralty</i> , and where at Common Law,	1	6	12
	2	2	2
	2	3	8
11. The <i>Admiralty</i> has Jurisdiction of <i>Flotsam</i> ,	1	6	12
12. An unjust Sentence in the <i>Admiralty</i> , where no Cause for a Prohibition. Other Cases of Prohibition,	1	6	12
13. Of Courts Martial in the Sea Service, how held, &c.	1	13	26
	1	13	27

Adventurers. See Merchants.

Agents. See Ambassadors.

Agriculture.

1. Agriculture and Pasture, the two earliest Arts,	1	1	3
--	---	---	---

Algier. See Pirates 5, 6.

Aliens.

See Customs 7. Subsidies, Trials, 4, &c.

1. Who is an Alien by the Law of <i>England</i> ?	3	1	8
	3	2	1
2. Whether he can purchase Lands, and to what Purposes?	3	2	1
	3	2	2
3. His Issue not inheritable to him in <i>England</i> ,	3	2	2
4. How the Laws of Descents differ in several Countries,	3	2	3
5. The Rules of Descents lineal and collateral by the Law of <i>England</i> ,	3	2	4
	3	2	5
6. In what Cases an Impediment in an Ancestor shall hinder a Descent, or not,	3	2	6
	3	2	8
	3	3	3
	3	3	12
	3	1	8
7. Where Issue of <i>Englishmen</i> , tho' born beyond Sea, shall not be accounted Aliens; and of other Persons born out of the King's Dominions,	3	2	1
	3	2	7
	3	2	9
	3	3	4
	3	3	5
			8.

THE TABLE.

	B.	Ch.	§.
8. Whether Aliens may maintain real and personal Actions, and in what Cases,	3	2	10
	3	2	11
	3	2	12
9. The King, when and by what Means intitled, to the Lands, &c. purchased by an Alien,	3	2	10
	3	2	11
10. The Copyhold of an Alien not given to the King,	3	2	11
11. Some Cases relating to Aliens,	3	2	12
12. The Effects of Naturalization,	3	3	1
	3	3	3
13. Naturalization not compleat without an Act of Parliament,	3	3	2
14. The Nature of the Union of <i>Ireland</i> to <i>England</i> ,	3	3	5
15. Whether a Person naturalized in <i>Ireland</i> be thereby naturalized in <i>England</i> ,	3	3	6
16. Of Rights which a conquered Country may lose or enjoy by Permission of the Conqueror,	3	3	7
	3	3	8
17. The Condition of the People of <i>Ireland</i> before <i>Henry II.</i> and his Alterations,	3	3	8
18. How Aliens are treated in <i>France</i> with respect to the Succession to their Goods,	3	3	9
19. How the <i>Jews</i> (with respect to their Succession) were treated formerly, and now. See <i>Jews</i> ,	3	3	10
20. The Natives of Countries formerly (but not now) in Possession of the Crown of <i>England</i> , are <i>Aliens</i> ; otherwise used in <i>France</i> ,	3	3	11
21. Denization is by Letters Patents; its Effects are imperfect,	3	3	12
	3	3	13
22. Whether and in what Case an Alien may be capable of Dower in <i>England</i> . A <i>Jew</i> cannot,	3	3	13
23. A Denizen by Patent is not capable of Honour in <i>England</i> ,	3	3	14
24. An Alien may be a Witness; an Infidel may bring an Action,	3	4	7
25. How an Alien may have or lose the Benefit of the King's general Pardon,	2	4	9

Alliances. See Leagues, Treaties.

Ambassadors.

1. Exempted from Reprizals,	1	2	18
2. Their Functions, and how they differ from Agents,	1	10	1
			3.

THE TABLE

	B.	Ch.	§.
3. Divided into ordinary and extraordinary; how these differ,	I	10	2
4. Qualifications requisite in Ambassadors,	I	10	3
5. None but Sovereign Princes can send Ambassadors; Viceroy's cannot; but the Electors, &c. of Germany do,	I	10	4
6. Ambassadors protected by the Laws divine, and of Nations; to whom extended,	I	10	5
7. Being warned not to come, they are treated as Enemies; but if safe Conduct granted, are protected even among Enemies,	I	10	6
8. The Degree of the Crime of violating their Privileges,	I	10	6
9. Causes for which States may reasonably refuse to receive them,	I	10	7
10. Whether they be punishable, if they offend against the Laws of Nations,	I	10	8
11. When they commit against the State, with whom they reside, whether punishable; and who is their proper Judge,	I	10	9
12. The Reasons of their Privilege, and Cases in which it hath been disallowed,	I	10	10
13. Whether privileged in Countries thro' which they pass without Leave,	I	10	10
14. Method by the Laws of England of proceeding against Ambassadors offending,	I	10	11
15. Not punishable where he resides, for an Offence being only <i>Malum Prohibitum</i> . Secus on importing prohibited Goods,	I	10	13
16. The Nature of their Office in Civil Matters, for their Prince and his Subjects,	I	10	14
17. Whether his House a Sanctuary, and whether he has Jurisdiction over his own Family,	I	10	15
18. Whether his Goods liable to Seizure for his Debts. The Remedy against him for his Debts,	I	10	16
19. Where they may forfeit their Privilege by committing an Outrage,	I	10	17
20. Offenders to be punished for Violence offered to them,	I	10	18
21. Conduct of the <i>Venetians</i> with respect to their Ambassadors,	I	10	19
22. By whom introduced by the Law of Nations,	I	10	20
			23.

THE TABLE.

	B. Ch. §.
23. Violating them, a just Cause of War,	I 10 21
24. Privileges as to civil Suits,	I 10 22

Ambition.

1. Ambition destructive of Concord among Men,	I 1 3
---	-------

Androclesia.

1. What it was?	{ I 2 1
	{ I 2 4

Appeal.

1. Where not to stay Execution,	I 3 9
---------------------------------	-------

Affurances.

1. The Nature of Affurances,	2 7 2
2. By whom first invented,	2 7 1
3. Established by Act of Parliament,	2 7 3
4. Various Kinds of Affurances, and on what Goods, &c.	2 7 4
5. Of dangerous Affurances, <i>lost</i> or <i>not lost</i> , &c. and of fraudulent, &c.	2 7 5
6. <i>Premium</i> , when received; mistaken Payment refunded,	2 7 6
7. The Extent of Affurances in Modern Practice,	2 7 7
8. Assuring the Ship, whether it includes the Cargo? Whether necessary to name all the particular Wares in the Policy?	2 7 8
9. Some Cases of Affurances,	2 7 9
	2 7 12
	2 7 15
10. When the Policy is discharged by Deviation?	2 7 5
	2 7 10
11. Whether Assurers liable for Goods removed from Ship to Ship,	2 7 11
12. Of ensuring more than Value; and usurious Agreements, Assurance Interest or no Interest,	2 7 12
13. Warranted to depart with Convoy, how fulfilled,	2 7 12
14. Where altering the Property of the Goods will discharge the Ensurers,	2 7 13
	15.

THE TABLE.

	B.	Ch.	§.
15. The Danger of leaving Blanks in Policies,	1	7	14
16. Taking by Pirates is a Peril of the Seas,	2	7	14
17. The Effect of the Ensured's Renunciation of the Lading after a Loss,	2	7	15
18. Ensurers, whether to answer for prohibited Goods, seized,	2	7	15
19. Bills of Lading useful in Assurances, to settle Disputes,	2	7	15
20. Penalty on insuring Wool to foreign Parts,	2	7	15

Attainder. See Pirates 31.

Average. See Contribution.

1. Average, described,	2	6	4
2. Petty Average, what,	2	9	6

Amity. See Piracy.

B.

BAIL. See Bills of Exchange.
Ballast. See Ships 22.

Barratry. See Mariners, Masters.

1. What Offence of the Master of a Ship may be Piracy, or Felony, or not,	1	4	17
--	---	---	----

Bills of Exchange. See Exchange.

1. Bill of Exchange, what it is, and by whom drawn,	2	10	13
2. Generally two or more drawn, and how? to be judged by the Custom of Merchants,	2	10	14
3. To be presented and accepted; what is an Accep- tance; and by whom? on Refusal, to be protested,	2	10	15
	2	10	20
	2	10	27
	2	10	28
4. Whether <i>indeb. Assumpsit</i> lies upon a general Ac- ceptance,	2	10	15

THE TABLE.

	B.	Ch.	§.
5. Method of protesting inland Bills prescribed by Statutes : Difference between them and Foreign Bills, - - - - -	2	10	15
	2	10	17
6. Actions on them, how to be brought,	2	10	15
7. All the Drawers liable in case of a Protest,	2	10	16
8. Whether the Person, to whom payable, must procure an Acceptance, - - - - -	2	10	16
	2	10	17
9. The Nature of a Protest ; its Use and Effects ; where necessary or not, - - - - -	2	10	17
	2	10	31
	2	10	32
	2	10	35
10. Bills drawn on two, how to be accepted,	2	10	18
	2	10	29
11. Where a Bill drawn by a Factor of a Company, and accepted by a Member, shall bind the Company or not, - - - - -	2	10	19
	2	10	30
12. A Bill may be accepted for Part, - - - - -	2	10	21
13. Bills accepted for the Honour of the Drawer oblige ; they are to be protected, and how ?	2	10	21
	2	10	29
	2	10	33
14. When and how Countermands may be made ?	2	10	22
15. Drawer and Acceptor, to whom bound ?	2	10	23
16. Collateral Security after the Time of Payment elapsed, how given, and its Effect ?	2	10	24
17. Where the Bill and Protest are both to be re-mitted or not, and why ? - - - - -	2	10	25
18. What is to be done in case of a Bill lost,	2	10	15
	2	10	26
19. Of Blank Endorsements, their Validity,	2	10	27
20. Bills of Exchange, not revocable by the Acceptor,	2	10	28
21. A Bill may be accepted to be paid at a longer time than it was drawn for, - - - - -	2	10	28
22. Bills, at what time to be protested for Non-Payment, - - - - -	2	10	30
	2	10	31
23. Where the Acceptor becomes insolvent before the Day of Payment, a Protest ought to go,	2	10	32
24. Where paid too early, and the Party breaks, the Money payable over again, - - - - -	2	10	32
	2	10	37
25. What to be done, where the Acceptor is ready to pay, but the Holder of the Bill is dead ; and <i>vice versa</i> , - - - - -	2	10	34
			26.

T H E T A B L E .

	B.	Ch.	§.
26. Of Exchange by way of Letters of Credit :	}	2	10
The Sorts and Frame of them, - - - -			
27. Letters of Advice to be observed, - - - -	}	2	10
28. Bills and Notes assignable over, and how? Fe- lony to forge them or the Assignment, &c.			
29. Whether it be necessary to aver that the De- fendant is a Merchant; in case on the Custom of Merchants, &c. - - - -	}	2	10
<i>Bills of Lading. See Assurances</i> 19. <i>Merchants</i> 34. <i>Boats. See Ships</i> 20, 21. <i>Bondage. See Freedom.</i>			

Bottomry. See Money.

1. A wide Difference between Money lent for Commerce on Land, and that which is lent for the Sea, - - - -	}	2	11	8
2. In Loans by way of Bottomry, at the Times different Contracts have their Inceptions, - -				12
3. In which Cases the Lender, and in which the Borrower, is to bear the whole or part of the Loss. The Money lost by Deviation,	}	2	11	9
4. In what Case the Master to bind his Owners, and in what Case some of the Owners to bind the rest; may take up Money on Bottomry,				10
5. The Etymology of the Word, the Nature and Use of the Thing, - - - -	}	2	11	11
6. Bottomry allowed by all Maritime Countries,				12
7. A fictitious Bottomry is unconscionable; yet has had a Judgment in Favour of it, - - -	}	2	11	13
8. The Gain and Risque ought to bear a Propor- tion to each other, - - - -				13
9. <i>Usura Marina</i> , what, and whether lawful?	}	2	11	14
10. Of <i>Usufructs</i> , or Money advanced into the Stock of Companies, - - - -				15
	}	2	11	16

British Seas. See Dominion, Flag, Seas.

Butlerage.

1. What it is, and by whom paid, or not, - -	2	8	8
2. Person free of it, not to custom the Wines of	}	2	8
Persons unfree, - - - -			
3. When			

THE TABLE.

	B.	Ch.	s.
3. When it becomes due, - - - - -	2	8	9
4. Not discharged by a Grant to be free of all } Customs and Impositions, - - - - -	2	8	10

C.

CAPERS. See *Privateers*.
Captains. See *Commanders*.

Caption and Captors. See *Privateers*, *Prizes*, *War*.

1. What shall be said a legal Caption, - - -	1	1	15
2. What Things taken from an Enemy, become } the Captor's, - - - - -	1	1	18
	1	1	20
	1	13	10
3. Whether any and what Goods of a neutral } Power may become the Captor's? - - -	1	1	24
	1	1	25
4. Who shall share the Spoil of Prize Ships, -	1	2	22
5. Where Captors may not hold the Capture, and } yet are not Pirates, - - - - -	1	2	24
6. Captors ought to exhibit Ship-Papers, &c. -	1	2	25
7. Captors are to get Prizes condemned, and pay } the Admiral his Share before they convert them } to their own Use, - - - - -	1	3	6
8. Where Captors may punish Pirates without } Trial, - - - - -	1	4	12
	1	4	13

Charter-Party.

1. What it is, its usual Contents, - - -	2	4	3
	2	4	4
	2	4	8
2. How construed, as also parol Agreements; } they must be regularly pleaded, - - -	2	4	4
	2	4	8
	2	4	16
	2	4	17
3. Whether the Contract be destroyed by the Ship's } being taken and retaken in War, - - -	2	4	13
4. Where the mutual Covenants shall not be plead- } ed in Bar of each other, - - - - -	2	4	17
5. <i>Chelsea</i> Hospital, - - - - -	1	13	27

THE TABLE

B. Ch. 5.

Cinque-Ports. See *Prisage* 1.

Clergy. See *Pirates*.

Commanders. See *Flag, Mariners, Prizes, Privateers, Ships, Spies, War.*

1. The Benefits arising to a State from its having good Commanders,	I	13	1
2. What Qualities endear Commanders to the Soldiers and Mariners,	I	13	2
3. Good Commanders ought not to be too readily slighted by their Sovereigns, nor Complaints against them too much favoured,	I	13	3
4. They ought to preserve and exhibit the Writings taken in Prizes,	I	2	25
5. The Difference (as to Adjudication) between Ships yielding voluntarily, and those taken in Fight,	I	13	9
6. How the Crews, &c. are to be treated, where Ships yield with fighting; and whether in Case of fighting, Quarter to be given,	I	13	10
7. Fire-Ships, how treated; their Crews, &c. to have no Quarter,	I	13	12
8. Ships of War, how to prepare for Fight? whether they may be yielded; or being overpowered, accept of Quarter? the Effect of Quarter given,	I	13	13
9. Orders are to be obeyed with great Strictness. Disobedience to be severely punished,	I	13	14
10. Cowards in Fight, to be punished with Death. A Commander in Chief ought not to expose his Person,	I	13	15
11. Quarter, when to be given, or not,	I	13	13
12. Ships, &c. are mutually to assist each other: Of Convoys, and the Protection due from them,	I	13	15
13. Of Pursuit, and Slaughter after a Victory,	I	13	16
14. Who ought to be exempted from Slaughter, in Towns, &c. taken by Assault,	I	13	17
15. Whether, and in what Cases, Hostages may be put to Death,	I	13	18
16. Muti			

THE TABLE

	B.	Ch.	§.
16. Mutiny, what; and how punished, - - -	{	13	19
	{	13	23
17. Whether it be lawful to cause Enemies to desert their Sovereign? Deserters, how punished?	{	13	20
18. Spies, their Use, how punished? - - -	{	13	7
	{	13	21
19. Disobeying or resisting Officers, how punished?	{	13	22
20. Great Care to be taken that Ships be not lost: Magazines, &c. not to be destroyed, - - -	{	13	24
21. Of Courts-Martial in the Sea-Service, how appointed? of whom to consist; when and what triable by them?	{	13	26
	{	13	27
22. Good Pay and good Victuals necessary to the Sea-Service, - - -	{	13	28
23. A Rapfody on Triumphs, - - -	{	13	29

Commerce. See Bottomry. Merchants. Money.

1. Commerce supplies the Place of a natural Coh-munity of Goods, - - -	{	2	11
--	---	---	----

Commission. See Factors.

Commonwealth or State.

1. Its Marks, and constituent Parts, - - -	{	4	3
2. Pirates, not a Commonwealth, - - -	{	4	3

Communion of Goods. See Dominion.

Companies. See Merchants.

Conduct. See Merchants.

Contraband Goods.

1. Furnished to an Enemy, and no Denunciation of War, how the other Party may act?	{	1	20
2. What Goods shall or shall not be deemed contraband, - - -	{	1	24
	{	1	25

Contracts. See Treaties.

1. When triable in the Admiralty, and when at the Common Law, - - -	{	6	12
A 2			
2. When			

THE TABLE.

B. Ch. §.

2. Whether the Contracts of Princes may be avoided for Force or Fear? } 1 8 8

Contribution. See Pirates 7. Wreck.

1. Whether Contribution may be had in Case of Reprizals suffered, } 1 2 27
} 1 2 28

2. Contribution for Redemption, when cognizable in the Admiralty, } 1 6 12

3. Is a principal Matter in Leagues, and is hard to regulate, } 1 7 19

4. Whether a Neuter may pay Contribution to one of the Parties at War? } 1 12 3
} 1 12 9

5. Whether Neuter can be effectually interdicted by their Prince from paying Contribution? } 1 12 10
} 1 12 12

6. What Goods shall come into Average, or not, and how? } 2 6 4
} 2 6 6
} 2 6 8
} 2 6 14
} 2 6 15
} 2 6 16

7. Some Rules concerning Contribution, } 2 6 4

8. In what Cases the Ship's Apparel may be withheld in Average, or not, } 2 6 6
} 2 6 12

9. The Residue of the Cargo is tacitly obliged to Contribution, and when, } 2 6 7

10. In what Case both Ship and Lading may be liable to the Average, } 2 6 9

11. Whether Average or not, where two Ships encounter by Misfortune? } 2 6 10
} 2 9 7

12. Cases in which there shall be no Average, or the Loss to be paid by the Master, } 2 6 11
} 2 6 12
} 2 6 15

13. No Contribution but where the Ship arrives in Safety, } 2 6 12

14. Where the Ship and Lading shall contribute to redeem the Master or Mate, } 1 4 6
} 2 6 13

15. Contribution or not, where Part lost by Pirates, or an Enemy, } 2 6 13
} 2 7 14

16. When Contribution shall be made for Pilotage, } 2 6 15

17. By whom born to redeem Goods from a Pirate, } 2 7 14

18. Whe-

THE TABLE:

	B. Ch.	§-
18. Whether the Master shall answer, or a Contribution be, for Loss sustained in Goods wasting?	2	7 15
<i>Convoys. See Commanders 12.</i>		
<i>Corruption of Blood. See Pirates 31.</i>		
<i>Counterband. See Pirates.</i>		
<i>Countermand. See Contraband.</i>		
<i>Courts Martial. See Commanders 21.</i>		
<i>Customs. See Excise. Subsidies.</i>		
1. Whether Impositions may be laid without Authority of Parliament,	2	12 2
2. Impositions laid by Consent of the Merchants only, are not lawful,	2	12 3
3. The History of the Privilege of the <i>Hanse Towns</i> ,	2	12 4
4. The Antiquity of Customers or Publicans. Good Advice to them,	2	12 5
5. Customs defined. <i>Magna Custumæ</i> , what, and on what Causes due,	2	12 6
6. <i>Parva Custumæ</i> , what, and by whom payable. Cases thereupon,	2	12 7
7. Liberties granted to Merchants-Strangers by Charter. <i>Medietas Lingue</i> ,	2	13 6
8. One Weight and Measure thro' the Kingdom enacted,	2	12 7
9. Wines not to be exported without Licence. <i>Not Law at this Day</i> ,	2	12 7
10. Duties on Goods exported,	2	13 9
11. Foreign Coin, Bullion, Diamonds, &c. may be exported Duty free,	2	13 10
12. Spices, who may import them,	2	13 11
13. Fees to the Officers how regulated? when to be half only, and when not to be paid,	2	13 12
14. Merchants may break Bulk in the Ports allowed by Law, and pay Custom only for what Goods they land,	2	15 24
	2	15 25
	2	15 1

THE TABLE

	B.	Ch.	p.
15. On what Goods, and upon what Terms, Drawbacks of the Customs are allowed, - - -	2	15	2
16. A Provision (now obsolete) concerning Compositions with the Farmers of the Customs, - - -	2	15	7
17. What Drawback allowed on Exportation of Wines - - -	2	15	3
18. Foreign Wool, upon what Terms exported, - - -	2	15	4
19. Drawback on the Exportation of Currants, - - -	2	15	5
20. What Goods exported, not to pay Customs, - - -	2	15	6
21. Allowance for Leakage of Wines, - - -	2	15	7
22. What shall be accounted Leakage, - - -	2	15	8
23. What Allowance on unmerchable Wines, - - -	2	15	9
24. What to be done in the Case of other unmerchable Goods, - - -	2	15	10
25. Where Strangers shall pay double Custom, - - -	2	15	11
26. Where, when, and before whom, Merchants may unlade in the Port of London. See <i>Ports</i> , - - -	2	15	12
27. What Allowance made upon the Northern Cloths, - - -	2	15	13
28. What Allowance made upon the Western Cloths, - - -	2	15	14
29. Allowance on Woollens exported, - - -	2	15	15
30. Allowance of 5 l. per Cent. upon the Subsidy of Poundage of all other Goods, - - -	2	15	16
31. The Officers, what Attendance they are to give, - - -	2	15	17
32. The Duty of Officers in dispatching the Merchants. Extortion in them or their Clerks prohibited, - - -	2	15	18
33. A saving for Duties to the City of London, - - -	2	15	19
34. The like for other Corporations, - - -	2	15	20
35. Regulation for searching Ships outward bound. The Penalty of Abuse therein, - - -	2	15	21
36. Timber, how rated, and to pay, - - -	2	15	22
37. Officers required to make Allowances, - - -	2	15	23
38. Where Goods lost at Sea, the like Quantity to be exported Duty free, - - -	2	15	24
39. Ships of War may be searched: Penalty on Smuggling, - - -	2	15	25
40. On Allowance for damaged Goods, the Merchant is not to export less than is contained in the Certificate, - - -	2	15	26

THE TABLE.

B. Ch. 6.

D.

DELAY of Justice. See Justice.

Demorage. See Charter-Party 4. *Wreck.*

Denial of Justice. See Justice.

Denization. *Denizen.* See Aliens.

Denunciation of War. See War.

- | | | | | | |
|---------------------------------------|---|---|---|---|----|
| 1. The Forms used by several Nations, | - | - | 1 | 2 | 21 |
| 2. May be conditional or absolute, | - | - | 1 | 1 | 22 |
| 3. Why used by Nations, | | | 1 | 1 | 23 |

Deadend. See Owners 13.

Devolution.

- | | | | | | |
|--|---|---|---|---|----|
| 1. What it is, and what necessary to it, | - | { | 2 | 5 | 4 |
| | | } | 2 | 6 | 16 |

Descents. See Aliens.

Desertion. See Commanders 17. *Mariners.*

Deviation. See Freight 12. *Masters* 3. 16.

Dominion. See *Mariner's Property*, *Seas*, *Ships*, *War.*

- | | | | | | | |
|---|---|---|---|---|---|-----|
| 1. Of Dominion in the primitive State of Man, or
universal Dominion, | - | - | - | 1 | 2 | 1 |
| 2. Whether universal Dominion might have continued? | | | | 1 | 4 | 2. |
| 3. Of the Causes which changed universal Dominion, | | | | 1 | 4 | 3 |
| 4. The Growth of private Propriety, | - | - | | 1 | 4 | 3. |
| 5. In the Laws of Dominion extreme Necessity
seems excepted, | - | - | - | 1 | 1 | 4. |
| 6. Whether any and what sort of War may change
Dominion? See War. | | | | 1 | 1 | 5. |
| 7. Dominion is established by Law and Use, | - | - | | 1 | 1 | 10. |
| 8. Dominion of the King of England in the British
Seas, | - | - | - | 1 | 4 | 11. |
| | | | | 1 | 5 | 1 |
| 9. The Dominion of the Sea provided for by Treaties, | | | | 1 | 5 | 9. |

THE TABLE.

	B.	Ch.	p.
10. The Effects of the King's Dominion of the <i>British</i> Seas,	1	5	13
11. The Importance of the Flag, and Dominion of the <i>British</i> Seas,	1	5	12
	1	5	15

Dower. See Aliens.

Drawback. See Customs.

E.

EAST-INDIA Company.

1. A Case relating to their exclusive Charter, before the Acts of Parliament in their Favour,	1	6	12
2. Their Stock what,	2	11	15

Ecclesiasticks. See Reprizals 18.

Embargo. See Masters 6.

Enemies.

1. Where they may be attacked, or not,	1	1	16
2. The Subjects of an Enemy, how treated in <i>England</i> at the breaking out of a War,	1	1	17
3. What Things taken from an Enemy will belong to the Captor,	1	1	18
4. The Goods of Enemies may be spoiled,	1	1	19
5. Where neutral Powers furnish Contraband Goods to one Party, and no Denunciation of War, what may the other Party do?	1	1	20
6. He is my Enemy who supplies my Enemy with warlike Necessaries,	1	13	8
7. Where they are not Pirates, tho' they rob with Pirates,	1	4	10
8. The Crimes of corresponding and relieving Enemies, and the Punishment,	1	13	7
	1	13	8
9. Of giving and taking Quarter,	1	13	13
	1	13	15
10. Whether it be right to cause Enemies to desert their Prince, or to surrender his Forts or Ships,	1	13	20
11. An Enemy cannot be guilty of Treason,	3	4	6

England.

T H E T A B L E.

B. Ch. §.

England. See Seas.

- | | | | | |
|--|---|---|---|----|
| 1. Our King's Dominion in the <i>British Seas</i> , - | { | 1 | 4 | 11 |
| | | 1 | 5 | 1 |
| 2. The Antiquity of the King's Dominion in the <i>British Seas</i> , - | } | 1 | 5 | 7 |

Enmity. See Enemies, Pirates, War.

Exchange. See Bills of Exchange.

- | | | | |
|---|---|----|----|
| 1. Its Antiquity among the <i>Hebrews</i> , - | 2 | 10 | 1 |
| 2. ——— among the <i>Romans</i> , and its Use, | 2 | 10 | 2 |
| 3. ——— among other Nations, - | 2 | 10 | 3 |
| 4. The several Sorts of Exchanges, - | 2 | 10 | 4 |
| 5. Of <i>Cambio Commune</i> , - | 2 | 10 | 4 |
| 6. Of <i>Cambio</i> real or Value for Value, - | 2 | 10 | 5 |
| 7. Of dry Exchange or Usury, - | 2 | 10 | 6 |
| 8. Of <i>Cambio fictitio</i> , or feigned Exchange; or }
Usury a little varied from the foregoing, - | 2 | 10 | 7 |
| 9. Of Exchanges in modern Use in <i>England</i> , - | 2 | 10 | 8 |
| 10. Of Exchange between <i>London</i> and other Places, | 2 | 10 | 9 |
| 11. How Bills are to be drawn for Money paid, - | 2 | 10 | 10 |
| 12. Usance, what a single Usance, - | 2 | 10 | 11 |
| 13. Double and treble Usance, half Usance, Usances }
to many different Places, - | 2 | 10 | 12 |

Excise.

- | | | | |
|------------------------------------|---|----|---|
| 1. Excise on Beer, &c. imported, - | 2 | 13 | 8 |
|------------------------------------|---|----|---|

Exile.

- | | | | |
|--|---|---|----|
| 1. Exile, what among the <i>Romans</i> and the <i>English</i> ; }
its Generation, - | 3 | 1 | 9 |
| 2. Abjuration was a legal Exile, - | 3 | 1 | 10 |

F.

F A C T O R S.

- | | | | |
|---|---|---|--------|
| 1. A Factor defined; his Qualifications. He shall }
answer if he exceeds his Commission, - | 3 | 8 | 1 |
| | 3 | 8 | 10 |
| 2. Commissions, their usual Extent. He is a bare }
Trustee for his Principal, - | 3 | 8 | 2 |
| | | | 3. Not |

THE TABLE.

	B.	Ch.	§.
3. Not to give Credit by a general Commission,	3	8	3
4. One Factor deals for several Merchants, where they may all be bound or not,	3	8	4
5. They ought to be provident for their Principals, and get in Debts due to them,	3	8	5
6. Where by false Entry or other Fraud of Factor or Principal, the other is damaged, the Wrong-doer shall answer,	3	8	6
7. Cases in which he, others in which the Merchant, shall bear the Loss,	3	8	7
8. Factor bound to pay a bill of Exchange which he has accepted, tho' his Merchant, the Drawer, fails after Acceptance,	3	8	8
9. Where obliged to pay the Freight or not,	3	8	9
10. Bound to make Assurance, being ordered so to do,	3	8	9
11. Not to compound Debts without Authority for that Purpose,	3	8	9
12. General Rules for their Conduct,	3	8	10

Faith. See King 4.

Fees. See Customs 13. 32.

Fireships. See Ships 6.

Flag. See Seas, Ships.

1. The Right of it in the <i>British</i> Seas belongs to <i>England</i> .	1	4	11
	1	5	1
	1	14	2
	1	14	3
2. The Duty of the Flag is but a Consequence of the Dominion of the Seas,	1	5	8
	1	14	4
	1	5	8
3. Duty of it, by whom to be paid, and its Antiquity,	1	5	14
	1	14	4
4. The Duty of, stipulated by Treaties,	1	5	9
	1	14	3
5. The Extent of the <i>British</i> Seas,	1	5	10
	1	5	14
6. The Duty of the Flag is a Right in the Crown of <i>England</i> ,	1	5	11
	1	14	4
7. The Duty of the Flag exacted by other Nations in their Seas,	1	5	11
	1	5	11
			8. The

T. H. E. T A B L E.

	B.	Ch.	§.
8. The Importance of the Duty of the Flag,	{ 1	5	12
	{ 1	5	13

Flotfam.

1. The Admiralty hath Jurisdiction of <i>Flotfam</i> ;	{ 1	6	12
and to whom it belongs, - - -	{ 2	5	8
2. The King's Prerogative as to it, - -	{ 2	5	6
	{ 2	5	8
3. What it is, - - -	2	5	6

Fœnus Nauticum. See *Bottomry.*

Force. See *Treaties* 41. *War.*

1. When Force may be lawful, or not, -	1	1	10
2. Force is an odious Method of acquiring Property, {	2	1	14
	1	2	28
3. Force will justify a neutral Power to declare for	{ 1	1	24
one of the Parties at War, - - -	{ 1	1	25
4. Force against neutral Powers, where excused by	{ 1	12	1
Necessity, - - -	{		

Foreigner. See *Alien.* *Merchants.* *Reprizals.*

Fraud. See *Assurances* 5. *Barratry.*

Freedom. See *Aliens.*

1. By Nature Men are free ; Slavery is introduced	{ 3	1	1
by the Law of Nations : For what Causes it may	{ 3	1	2
be just. Its Extent, - - -	{ 3	1	3
	{ 3	1	4
	{ 3	1	5
2. Slavery is obsolete in <i>Christendom</i> , - -	3	1	6
3. The Practice of the <i>Turks</i> with regard to their	{ 3	1	6
Captives, - - -	{ 3	1	6
4. Servitude, how in Use among Christians, -	3	1	7
5. Of Manumission, and making free ; <i>Englishmen</i> }	3	1	8
are born free, - - -	{ 3	1	9
6. Several ways of disfranchising, - - -	3	1	9
7. Exile, what ? Its consequences, - - -	{ 3	1	9
	{ 3	1	10
8. Freedom in Cities, &c. how gained ? its Effects,	3	1	11
9. Of the Freedom of <i>London</i> , - - -	3	1	11
10. Bond in Restraint of Trade, where good or not,	3	1	11

Freight.

THE TABLE.

	B.	Ch.	§.
<i>Freight. See Charter-Party. See Owners 12.</i>			
1. Of the modern ways of freighting of Ships, -	2	4	1
2. Of the ancient way of freighting of Ships, -	2	4	2
3. Freight is generally governed by the Contract, which being in Writing is called <i>Charter-Party</i> ,	2	4	3
4. Of Accidents to Merchant or Master preventing the Voyage, - - -	2	4	3
5. Where the Merchant will have his Goods unladed, Freight is due, - - -	2	4	5
6. What the Master may do if the Ship becomes unable, be arrested, &c. - - -	2	4	5
7. Of the Ship's Departure with respect to Freight and Damages, - - -	2	4	6
8. Freight may become due, though the <i>Charter-Party</i> not punctually complied with, -	2	4	6
9. Of Freight arising on a trading Voyage, and lost by contingent Actions, - - -	2	4	7
10. Of Freight become due on the various Ways of Contract, or where no Contract, -	2	4	8
	2	4	14
	2	4	16
11. Of Faults arising by the Freighter, and of the Death of the Ship with reference to Freight, -	2	4	9
	2	4	14
	2	4	16
12. Of Faults by the Master in taking in more Goods, and of putting into Ports, - -	2	4	10
13. The Lading, how obliged for the Freight, -	2	4	12
14. Whether Freight due, where the Goods are lost without Default of the Ship, - -	2	4	14
15. Of Freight contracted with a Mariner not the Master, - - -	2	4	15
16. Where the Master is to answer Freight, or not, for Passengers, - - -	2	4	16
17. Where Freight due, tho' the Ship lost, the Goods being saved, - - -	2	4	16

Fugitives.

1. Whether States (upon Request) ought to deliver up any, and what Fugitives? - -	I	II	3
	I	II	4
	I	II	5
	I	II	6
	I	II	11
	2. In		

THE TABLE.

	B.	Ch.	§.
2. In what Causes they ought to find an Assylum where they fly, - - -	1	11	4
	1	11	5
	1	11	6
3. Whether, and in what Case, an innocent Person may be delivered up? - - -	1	11	7
	1	11	9
4. Whether an innocent Person ought of his own Accord to yield himself, to prevent Mischiefs consequent upon protecting him? - - -	1	11	8
5. An exiled King ought not to be delivered up -	1	11	10
6. Fugitives guilty of Peculation have been delivered up, - - -	1	11	11

G.

GOODS. See *Communion, Contraband, Dominion, Property, War.*

1. <i>Greenwich Hospital</i> - - -	1	13	27
------------------------------------	---	----	----

Guarantees. See Treaties 21.

H.

HANSE Towns, - - -	1	2	3
---------------------------	---	---	---

Hostages. See Treaties 39.

1. Whether liable to be put to Death, and in what Cases, - - -	1	13	18
--	---	----	----

Hypothecation. See Bottomry, Masters 19.

I.

IETSAM. See *Wrack 7, 8, 9, 10.*

Jews. See Aliens 19.

1. The Government of the <i>Jews</i> , historically deduced from <i>Noah, &c.</i> - - -	3	6	1
	3	6	2
2. At what Time they first came to <i>England</i> , and how treated here? - - -	3	6	12
	3	6	13
	3	6	14
3. Their			

THE TABLE

	B.	Ch.	§.
3. Their Growth and State in <i>England</i> at the Time of <i>H. II.</i>	3	6	3
4. The Law of <i>R. I.</i> with respect to keeping and evidencing their Contracts; and the Intent of that Law,	3	6	4
5. Charters of King <i>John</i> to the <i>Jews</i> ,	3	6	6
6. The Court granted to the <i>Jews</i> was injurious to the Ecclesiastical Jurisdiction,	3	6	7
7. Of their Synagogues formerly in <i>England</i> , and the House of Converts, now the Rolls Liberties,	3	6	8
8. King <i>John</i> granted a Charter of Priesthood of all the <i>Jews</i> in <i>England</i> ,	3	6	9
9. Some Towns excluded them. Succession to their Houses, how?	3	6	10
10. Of their Right of Succession, Dower, Saits, Excommunication,	3	6	10
11. They lived here formerly in a State of Slavery, wore Badges, and were at the King's Pleasure, Body and Goods,	3	6	12
12. Their Expulsion formerly, and the Occasion of it. Their Re-establishment,	3	6	14

Impositions. See *Customs, Subsidies.*

Impressing. See *Mariners, Ships.*

Indiction. See *Denunciation, War.*

Infants. See *Masters.*

Infidels.

1. Leagues may be lawfully made with them,

1	1	24
1	1	25
1	7	27

Injustice. See *Justices.*

Insurance. See *Assurance.*

Insurrection. See *War.*

Interpellation.

1. Interpellation, how introduced, and its Use,

1	1	20
---	---	----

Invasion. See *War.*

Judgments.

THE TABLE

B. Ch. §.

Judgments. See Reprizals.

Jurisdiction. See Admiralty, Justice, King, Offences.

Justice. See Admiralty, Ambassadors, Justice, King, Offences.

1. Denial or Delay of Justice is Injustice; and a Cause for Reprizals,	{	1	2	5
		1	2	13
		1	2	14
		1	2	15
2. Justice is every Man's Right, who has not forfeited it,	{	1	2	5
3. Cases in which private Men may execute Justice, without the Solemnity of a Judgment,	{	1	6	10
		1	6	11

K.

KING. *See Fugitives, Leagues, Princes, Seas, Treaties.*

1. Of <i>England</i> , his Dominion in the <i>British</i> Seas,	{	1	4	11
		1	5	13
2. Where Kings or States may or may not partake of the Crimes of their Subjects,	{	1	11	1
3. An exiled King ought not to be delivered up,		1	11	10
4. Kings and States ought to keep Faith,		1	14	18

Kingdoms. See Aliens, Laws.

LADING. *See Owners 12. Wreck.*

1. In what Cases Goods may be cast overboard; and which Goods chiefly,	{	2	6	1
		2	6	4
		2	6	5
2. Goods cast overboard, how accounted for?		2	6	2
3. The Antiquity of the Law of the foregoing Matter,	{	2	6	3

Laws of Nature and Nations.

1. Human Actions subject to great Variety, and why?	{	3	9	1
		3	9	2
2. The Origin of human Laws, the Law of Nature is above them: Why? their Difference,	{	3	9	3
		3	9	5
				3. Of

THE TABLE

	B.	Ch.	§.
3. Of the Law of Nature, no Man is more a Magistrate than another, - - - - -	3	9	4
4. Why Magistrates may punish the Violation of the Laws of Nature, or of Nations? of punishing Equals, - - - - -	3	9	5
5. Where the Right of punishing an Equal fails, and why? - - - - -	3	9	7
6. From whom Subjects ought to seek Justice, - - - - -	3	9	8
7. By what means Kingdoms equal in Power execute the Judgments of each other, and in what Matters, - - - - -	3	9	9
8. Judgment given in <i>England</i> , how to be executed in <i>Ireland</i> , &c. whether so in the Plantations, - - - - -	3	9	11
	3	9	12

Leagues. See Treaties.

1. Leagues may be lawfully made with Infidels, - - - - -	1	1	24
2. Leagues defined, - - - - -	1	1	25
3. Statutes concerning the Breakers of them, - - - - -	1	7	27
	1	7	14
	1	9	7

Legation. See Pirates.

Letters of Marque. See Reprizals.

1. Caption under Letters of Marque, when it alters the Property, - - - - -	1	1	14
2. The Origin of Reprizals, - - - - -	1	2	1
	1	2	12
3. By whom, and for what Causes grantable, or not, - - - - -	1	2	1
	1	2	17
4. The Course to be observed in order to obtain them, - - - - -	1	2	6
	1	2	11
5. The Form of Letters Patents for special Reprizals, - - - - -	1	2	15
6. Men become subject to Reprizals by their Place of Residence or Domicil, not by their Place of Birth, - - - - -	1	2	16
7. What Persons exempted from Reprizals, - - - - -	1	2	18
8. Letters of Reprize justify assaulting those that resist, and the Consequences, - - - - -	1	2	20
9. Where Persons may be guilty of Piracy notwithstanding their Letters of Marque, - - - - -	1	2	23
	1	2	24
10. Caution to be given on obtaining them, - - - - -	1	2	25

Ligan.

THE TABLE.

B. Ch. §.

Ligan. See *Wreck* 7, 8, 9, 10.

Loadmanage.

- | | | | | | | |
|--|---|---|---|---|---|---|
| 1. Petty Loadmanage, what? | - | - | - | 2 | 9 | 5 |
| 2. Loadmanage, what? and Loadman, who? his Charge, &c. | - | - | - | 2 | 9 | 7 |

London. See *Freedom* 9. *Merchants.* *Ports.*

M.

MAINTENANCE. See *Bills of Exchange.*

Man of War. See *Commanders.*

Manumission. See *Freedom.*

Marc. See *Letters of Marque.*

Mariners. See *Commanders, Masters, Piracy, Privateers, Prizes.*

- | | | | | |
|--|---|---|----|----|
| 1. Deserting their Ships, forfeit their Wages, | { | 1 | 4 | 24 |
| 2. Whether impressing any, and what Ships be lawful? | { | 2 | 3 | 10 |
| 3. Whether impressing Mariners be lawful, and why? | { | 1 | 6 | 1 |
| 4. Objection against impressing Mariners, answered, | { | 1 | 6 | 7 |
| 5. The antient Punishment of Desertion, capital, | { | 1 | 6 | 8 |
| 6. Statutes against Desertion making it Felony, and directing the Trial, | { | 1 | 6 | 9 |
| 7. Whether a private Person may put such Deserter to Death, | { | 1 | 6 | 10 |
| | { | 1 | 6 | 11 |
| | { | 1 | 13 | 4 |
| | { | 1 | 13 | 6 |
| 8. Of Offences usually committed by Soldiers and Mariners, | { | 1 | 13 | 11 |
| | { | 1 | 13 | 22 |
| | { | 1 | 13 | 23 |
| | { | 1 | 13 | 25 |
| | { | 1 | 13 | 5 |
| | { | 1 | 13 | 11 |
| 9. Of Punishments for Offences by Soldiers and Mariners, | { | 1 | 13 | 19 |
| | { | 1 | 13 | 24 |
| | { | 1 | 13 | 23 |
| | { | 1 | 13 | 25 |
| | { | 1 | 13 | 25 |

VOL. II.

B b

10. Cowards

THE TABLE.

	B.	Ch.	§.
10. Cowards to be punished with Death, -	1	13	15
11. Provision made for them and their Widows, -	1	13	28
12. The different Degrees, Charges and Duties of Marine Officers, - - - - -	2	3	1
13. Of the Masters, Power and Duty as to the rest of the Officers and Mariners, - - - - -	2	3	2
14. The Duty of Mariners to each other, and to the Ship, - - - - -	2	3	3
15. Not to leave the Ship without Licence of the Master. When answerable for Damage. When their Pay commences, - - - - -	2	3	4
16. When and where, at whose Charges to be taken care of, being wounded or sick, - - - - -	2	3	5
17. Where their Oath shall discharge the Master, - - - - -	2	3	6
18. The Punishment for assaulting the Master on board, - - - - -	2	3	6
19. By what Accidents, &c. their Wages are lost, or not, - - - - -	2	3	7
20. Where they may all join in a Suit for their Wages, or not, - - - - -	2	3	8
21. Where their Wages liable to answer Damages? - - - - -	2	3	9
22. Where Goods taken up by them is a Discount of their Wages? - - - - -	2	3	11
23. Barratry, &c. in them, whether, how, and why imputed to the Master? - - - - -	2	3	13
24. An ancient Record to the Purpose of Sect. 23. - - - - -	2	3	16
25. For what Goods embezzled on board the Master is not answerable, - - - - -	2	3	17

Masters. See Barratry, Lading, Owners, Pilot, Pirates, Privateers, Prizes, Ships, Wreck.

1. Punishable, (and how) for leaving their Men aboard, &c. - - - - -	1	4	24
2. The Definition of a Master of a Ship; his Interest and Office in general, - - - - -	2	2	1
3. The Master, and not the Owners, answerable for Deviation and Barratry, - - - - -	2	2	1

4. Masters

THE TABLE.

	B.	Ch.	§.
4. Masters are bound to answer for Goods damaged or embezzled in Port, or at Sea; the Owners are also liable,	2	2	2
	2	2	8
	2	2	10
	2	9	5
5. The Master is chargeable with the Duty of Weighage,	2	2	2
6. The Master answerable for Damage occasioned by sailing after an Embargo. An Agreement dissolved by Embargo,	2	2	3
7. His Duty with respect to sailing, or staying in Port, in fair or tempestuous Weather,	2	2	4
8. His Duty as to Quantity of Lading, and Quality of Passengers received on board,	2	2	5
9. Not to ship Goods aboard the King's Enemies, though his own Ship leaky, &c.	2	2	6
10. Of his shipping unlawful Goods, or Goods at unlawful Places,	2	2	7
11. Not to sail without sufficient Mariners, Tackle, &c.	2	2	7
	2	2	10
12. Not to use unlawful Colours,	2	2	8
13. Where excused, or not, as to Goods taken from him by Force,	2	2	8
14. Not to carry counterfeit Cocquets, nor to refuse Payment of Duties, &c.	2	2	9
15. His Care of the Ship in Port, and to clear out,	2	2	11
16. His Duty at Sea with respect to his Course,	2	2	12
	2	2	12
17. Whether and in what Case answerable for the Mariners,	2	3	13
	2	3	14
	2	3	15
	2	3	16
18. Charge against him, how to be brought? Action lies against an Infant, Master, &c.	2	2	13
	2	1	10
	2	2	14
19. His Power to sell or hypothecate the Ship, &c. in what Cases, or not?	2	2	15
	2	2	16
	2	6	13
	2	11	11
20. Orders to be carefully inspected and obeyed,	2	2	16
21. What Vessels and Mariners to be used in trading with Goods of <i>Asia</i> , <i>Africa</i> , and <i>America</i> ,	2	2	17
22. What			

T H E T A B L E.

	B.	Ch.	§
22. What Ships, &c. may go from Port to Port in } England, &c. and how ? - - - - - }	2	2	18
23. Goods imported, when to be of the Country, } whence brought, or not, - - - - - }	2	2	19
24. Not to use affected Delay in coming to his } Place of Discharge. The Manner of making } his Entries, - - - - - }	2	2	20
25. What Goods not to be imported from the Ne- } therlands or Germany, - - - - - }	2	2	22
26. The Master's Power and Duty, with respect to } the rest of the Officers and Mariners, - - }	2	3	2
27. For what Goods embezzled on Board, the Mas- } ter is not answerable, - - - - - }	2	3	17
28. Master cannot sue in the Admiralty for his } Wages. Nor for Seamen's Wages which he had } paid, - - - - - }	2	3	8
29. Whether Goods can be attached in the Master's } Hands, - - - - - }	2	3	19
30. His Duty and Interest, if a Passenger dies on } board, &c. if himself dies, the Mate's Duty, }	2	4	11
31. When the Master is to make good the Loss by } Wreck, or not, - - - - - }	2	5	10
32. In what Cases the Master may cast Goods } overboard, - - - - - }	2	6	1
33. The Master's Duty to see the Average settled } and answered, - - - - - }	2	6	7
34. Where the Ship and Lading shall contribute to } redeem the Master ? - - - - - }	1	4	6
35. Where the Master shall pay the Loss of Goods } cast overboard, - - - - - }	2	6	15
36. Master wilfully destroying his Ship, guilty of } Felony, - - - - - }	2	11	11

Mediation. See Treaties 21.

Medietas Linguae. See Trial 4. &c.

Merchants and Merchandize. See Bills of Exchange, Butlerage, Customs, Factors, Lading, Pilot, Prizage, Reprizals, Sect. 18. Subsidies, Wreck.

T H E T A B L E.

	B.	Ch.	§.
1. Where Merchandize is embezzled by a Master of a Ship, when Felony or not,	1	4	17
2. Merchants anciently relieved under Royal Commissions for Frauds in Contracts, &c. as well as Piracy,	1	4	33
2. Whether the King may restrain Infidel Merchants, or our Merchants from trading to Infidel Countries,	2	12	2
4. Diamonds, Gold, &c. may be exported Duty free,	2	13	10
5. Tare and Tret, what ?	2	13	14
6. Scavage, what ? and where ? and to whom payable,	2	14	3
7. Scavage, by whom payable, and how regulated ?	2	14	2
8. Scavage, at what Rate payable ?	2	14	3
9. Package, what ? and where, and at what Rates payable ?	2	14	4
10. Package, how paid by Strangers,	2	14	5
11. Of Portorage, and Water-side Porters : At what Rates paid,	2	14	5
12. Water-Baillage, what ?	2	14	7
13. Commerce is both honourable and profitable.. Its Benefits enumerated,	3	7	1
14. Merchants ought to be tender of giving a Character, whereby another is to gain a Credit,	3	7	2
15. 'Tis for the Benefit of the Publick to have the Noble and Rich to engage in Commerce. Particular Instances mentioned,	3	7	2
16. Abstract from the Statute for ending Suits by Arbitration ; and Cases thereon,	3	7	2
17. History of the Company of Merchants Adventurers,	3	7	3
18. Of the <i>East-India</i> Company,	3	7	4
19. Of the <i>Dutch East-India</i> Company,	3	7	5
20. The <i>African</i> Company. The <i>French East-India</i> Company,	3	7	6
21. Whether, and in what Cases, Companies are for the Benefit of Trade, or not,	3	7	7
22. Merchants provided for by Law in the <i>Saxon</i> Times ; and by <i>Magna Charta</i> ,	3	7	8
23. Merchant-Strangers, how to be treated when their Sovereign is an Enemy,	3	7	10

THE TABLE.

	B.	Ch.	§.
24. Merchants made Dénizens by Patents or Act of Parliament, whether to pay such Customs, &c. as before?	3	7	12
25. What kinds of Dealings shall denominate Men Merchants, or not,	3	7	13
26. The Right of Survivorship holds not among Merchants,	3	7	14
27. One Partner may have Account against the other,	3	7	14
28. Where there are Part-owners in a Ship, and cannot agree what is to be done?	3	7	14
29. Their Controversies to be determined by Law-Merchant. Other Privileges,	3	7	15
30. They are the only Subjects who may depart the Realm, &c. without Licence,	3	7	16
31. Merchants-Strangers are bound by prohibitory Laws of the Land,	3	7	17
32. Marking of Goods, its Use. The same guarded by Law,	3	7	18
33. What By-Law of a Company may be good to give themselves a Preference,	3	7	7
34. The Use of Bills of Lading with respect to altering Property,	3	7	18

Money. See Bills of Exchange.

1. Its use and Abuse; Praise and Dispraise,	2	11	2
	2	11	3
	2	11	6
	2	11	7
2. How Money becomes the Measure of the Value of Things,	2	11	4
	2	11	5
3. Money does not hinder, but assists the Permutation of natural Things,	2	11	6
4. Money is ancillary to Charity,	2	11	7

Murder. See Pirates.

Mute. See Pirates 34.

Mutiny. See Commanders 16.

N. NATURALIZATION. See Aliens.

Nature. See Laws of it, &c.

Navi-

THE TABLE.

B. Ch. §.

Navigation. See Merchants, Owners, Pirates, Privateers, Prizes, Ships.

1. Its Encomium, - - - - - 2 1 1

Necessity. See Occupancy.

- | | | | | |
|--|---|---|----|----|
| 1. Extreme Necessity seems excepted from the Laws of Property, | } | 1 | 1 | |
| 2. May excuse the taking Stores at Sea, paying or giving Bills for them, | } | 1 | 4 | 20 |
| 3. Where it excuses Force used against a Neutral Power, | } | 1 | 12 | 1 |
| 4. Where extreme Necessity excuses Neuters for paying Contribution, even contrary to the Interdiction of their Prince, | } | 1 | 12 | 10 |
| 5. Extreme Necessity excuses the consuming of Things devoted to God, | } | 3 | 5 | 12 |

Neuters and Neutrality.

- | | | | | |
|--|---|---|----|----|
| 1. Where a Neutral Power ought to restore Prizes taken at Sea. <i>See Prizes.</i> | } | 1 | 2 | 16 |
| 2. Whether Enemies may or may not be attacked in a neutral Port, &c. | } | 1 | 1 | 24 |
| 3. <i>See Enemies, Sect. 5.</i> | | | | |
| 4. Supplying Necessaries for War to an Enemy, is a just Cause of War, | } | 1 | 13 | 8 |
| 5. What Goods a Neuter may well furnish to a Party in War, | } | 1 | 1 | 24 |
| 6. Whether a neutral Power may be excused for assisting one of the Parties at War, | } | 1 | 1 | 25 |
| 7. The Kinds of Neutrality, and how each is governed, | | 1 | 9 | 8 |
| 8. The Advantages and Disadvantages of Neutrality, | | 1 | 9 | 9 |
| 9. Neutral Powers, in what Cases to declare, and for whom? | } | 1 | 9 | 10 |
| 10. Whether it be lawful for warring Powers to use Force against Neutrals, &c. | } | 1 | 12 | 1 |
| 11. The Conduct to be observed in a strict Neutrality, | } | 1 | 12 | 2 |
| 12. Whether neutral Powers may pay Contribution to a warring Party, | } | 1 | 12 | 9 |
| 13. Whether Neuters may be effectually interdicted by their Prince from paying Contribution, &c. | } | 1 | 12 | 10 |

THE TABLE.

B. Ch. §.

14. The Intent of Interdictions against Contribu-	}	1	12	10.
tion to be paid by Neuters, - - -	}	1	12	11

O.

OATHS.

1. Oath given to Pirate, whether it obliges? -	}	1	4	7
2. Whether exacting an Oath to pay Money for	}	1	4	18
Redemption be Piracy, - - -	}	1	4	18

Obedience. See *Commanders* 9. 19.

Occupancy.

1. Occupancy, one Method of acquiring Property,	}	1	1	3
2. Occupancy, a Right antecedent to all other Di-	}	1	1	10
vision of Property, - - -	}	3	5	1
3. Natural Vacancies give Right to Occupants,	}	3	5	2
or Planters, - - -	}	3	5	3
4. Civil Vacancy, what? what shall not be said a	}	3	5	3
Dereliction? - - -	}	3	5	3
5. People expelled their Country have a Right to?	}	3	5	4
seek and occupy void Places, - - -	}	3	5	4
6. Whether Planters acquire a Right, or an Usufruct,	}	3	5	5
7. What is due or not to the Necessities of new	}	3	5	6
Planters; Persons in Distress at Sea, &c. -	}	3	5	7
	}	3	5	8
	}	3	5	9
8. The primitive Communion of Goods, and Chris-	}	3	5	10
tian Charity, to have their Limits, - - -	}	3	5	10
9. Plantations, by what Laws to be governed, -	}	3	5	12

Offences and Offenders. See *Fugitives, King, Mariners,*
5, 6, 7, 8, 9, 10.

1. Offences, by whom properly punished, - - -	}	1	11	2
---	---	---	----	---

Officers. See *Commanders, Customs* 13. *Mariners,*
Masters.

11. Provision made for Officers Widows, - - -	}	1	13	28
---	---	---	----	----

Orders. See *Commanders* 9. *Masters* 20.

Owners.

THE TABLE.

B. Ch. §.

Owners. See Masters, Piracy, Privateers, Prizes, Ships.

1. The Majority of the Owners may send out their Ship without the Consent of the rest, but not without their Privy; upon what Terms. Whether the lesser Number may send, &c.	} 2	I	2
	} 2	I	3
2. A Part-Owner may maintain <i>Treuer</i> for an Eighth, &c.	} 2	I	2
	} 2	I	14
3. Part-Owners are Tenants in common of a Ship,	} 2	I	2
4. Whether Owners must continue their Partnership until the Ship make one Voyage,	} 2	I	3
5. The Master is to be chosen by the Owners, by their Value, not Number. Qualities requisite in him,	} 2	I	4
6. Where the Master shall answer to the Owners; and where they are chargeable for his Default; or Debt contracted by him, or not,	} 2	I	5
	} 2	I	10
	} 2	2	16
7. Where an Action will lie for or against some of them only, or not,	} 2	I	5
8. Where the breaking up of the Ship determines the Partnership, or not,	} 2	I	6
9. Whether the Sale of a Ship forfeited for Piracy may stand or not,	} 2	I	9
10. What Damages the unlawful Possessor of a Ship shall answer to the Owners,	} 2	I	11
11. In order to the safe Custody of a Ship arrested, the Officer may take her Sails,	} 2	I	11
12. Where the Owners shall have Freight, though the Lading be lost,	} 2	I	12
13. Whether and when a Ship becomes a Deodand, or not,	} 2	I	13
14. Forfeitures for running, or undertaking to run imported Goods,	} 2	I	16
15. A Case in which the Owner mortgaged the Ship several times, and the first Mortgagee was postponed,	} 2	I	9

P.

PACKAGE. *See Merchants 9, 10.*

Pardon.

1. What Pardon will extend to Piracy, or not?	} I	4	26
	} I	4	28

Partners.

THE TABLE.

B. Ch. 6

Partners. See *Merchants, Owners,*

Passage, See *Seas 8, &c.*

Passenger. See *Freight 16. Masters 29.*

Peace. See *Leagues, Treaties, Truce, War.*

Pension. See *Treaties.*

Pilot.

1. His Duty and Charge,	2	9	1
2. His Punishment, by some Laws, for Ignorance, &c.	2	9	2
3. By whom employed, and paid,	2	9	2
4. Who shall answer if the Ship miscarries under his Care,	2	9	3

Pirates, and Piracy.

1. Whether a Caption by Pirates alters Property, and when ?	1	1	14
2. Persons having Letters of Marque may be guilty of Piracy,	1	2	23
3. Their Definition or Description. They are Enemies to Mankind,	1	2	24
4. Sovereigns are (by the Law of Nature) bound to restrain them : But not by the Civil Law, or the Common Law,	1	4	1
5. A Company of Pirates are not a Commonwealth or State, therefore not properly Enemies,	1	4	2
6. Whether capable of the Solemnities of War, and Rights of Legation,	1	4	3
7. Whether Ship and Lading may be obliged to contribute to redeem the Master or not ?	1	4	4
8. Where a Pirate may be entitled to Ransom, or not ?	1	4	5
9. Oath given to a Pirate, whether it obliges,	1	4	6
10. <i>English</i> Pirates within the Stat. 28 H. 8. guilty of Felony. The like of foreign Pirates spoiling <i>Englishmen</i> ,	1	4	7
11. Enemies, where not guilty of Piracy, though they rob with Pirates,	1	4	8

12. Piracies

THE TABLE.

	B.	Ch.	§.
12. Piracies within the <i>British</i> Seas punishable by the King of <i>England</i> ,	}	I	4 11
13. Pirates on the Ocean punishable instantly without Judgment,	}	I	4 12
14. The like if brought into Port, and the Judge rejects the Trial, &c.	}	I	4 13
15. Whether all are Principals in Murder by Common Law, and by the Marine Law,	}	I	4 14
16. Where a Subject of one foreign Army having robbed another, brings the Booty to <i>England</i> , whether any, and what Redress?	}	I	4 15
17. Having carried the Colours of a Prince in Amity, and making Prize under an Enemy's Commission, makes not the Captors Pirates,	}	I	4 15
18. Taking Men to sell for Slaves, whether Piracy, or not?	}	I	4 16
19. Piracy may be committed, though nothing taken. Or where Goods are taken out of a Ship, and no body in it,	}	I	4 18
20. Whether the Owners or Employers shall answer Damage, where a Ship having a Commission of Reprizal commits Piracy,	}	I	4 19
21. What taking of Goods (being enforced by Necessity) is not Piracy,	}	I	4 20
22. Merchants Goods taken from Pirates, whether they belong to the Captors, or the former Owners?	}	I	4 21
23. Sale of Goods taken by Pirates, alter not the Property. Otherwise of the Goods of Strangers sold in <i>England</i> in open Market,	}	I	4 22
24. Goods taken by them, coming afterwards to Land, shall be delivered to the Owner,	}	I	4 23
25. Not punishable at Common Law, but by the Civil Law by the Admiral, before the <i>Stat.</i> 28 <i>H.</i> 8. c. 15.	}	I	4 24
26. The Statutes against Piracy, directing the Trial, &c. Loss of Lands and Goods,	}	I	4 24
27. Denizens acting against <i>British</i> Subjects under foreign Authority, Pirates,	}	I	4 24
28. What other Offences are made Piracy, &c. by the Act 11 and 12 <i>W.</i> 3. ch. 7. and subsequent Statutes,	}	I	4 24
29. Accessories			

T H E T A B L E.

	B.	Ch.	§.
29. Accessories to Piracy, when to be punished as	1	4	24
Principals or not, - - - - -	1	4	30
30. Rewards enacted for defending against Pirates,	1	4	24
discovering Combinations, &c. - - - - -	1	4	25
31. Construction upon Stat. 28 H. 8. ab. 15.	1	4	26
	1	4	29
	1	4	30
32. Robbery in Port is not Piracy, - - - - -	1	4	27
33. What Pardon will extend to Piracy, or not?	1	4	26
	1	4	28
34. Pirate standing mute was put to his Penance,	1	4	29
35. Pirate brings the Goods into <i>England</i> , where	1	4	31
triable? - - - - -	1	4	31
36. Whether <i>B. R.</i> will upon a <i>Habeas Corpus</i> dis-	1	4	32
charge a Person suspected of Piracy, after <i>Ignora-</i>	1	4	32
<i>mus</i> returned by the Grand Jury, - - - - -	1	4	32
37. Murder at Sea, triable at Land, by Statute, -	1	4	25

Planters. See *Occupancy.*

Porterage. See *Merchants* 11.

Ports.

1. The Peace of neutral Ports to be preserved, -	1	1	16
2. Ports are within the Bodies of the Countries,	1	4	27
therefore Robbery there not Piracy, - - - - -	1	4	27
3. Ports defined or described, - - - - -	2	14	8
4. A Member of a Port, and a Creek, described,	2	14	8
5. The Ports with their Members and Creeks in	2	14	9
<i>England</i> and <i>Wales</i> , enumerated, - - - - -	2	14	9
6. Port of <i>London</i> , its Extent, - - - - -	2	14	10
7. A List of the lawful Landing Places for Goods	2	14	11
in the Port of <i>London</i> , - - - - -	2	14	11
8. What Goods may be shipped or landed at other	2	14	12
than the lawful Wharfs and Keys in the Port	2	14	12
of <i>London</i> , - - - - -	2	14	12

Possession. See *Dominion, Occupancy, Property.*

Poundage. See *Subsidies.*

Prescription.

THE TABLE.

B. Ch. §.

Prescription.

1. Whether valid among States,	-	-	{	1	5	14
				1	14	14
				1	14	15
2. Its Force in some Instances,	-	-		2	5	4

Pressing. See Mariners, Ships.

Primage.

1. What it is, and for what Consideration paid,	-	2	9	5
---	---	---	---	---

Princes and States. See Kings, Leagues, Treaties.

1. Why Princes are called Gods?	-	-	1	2	5
2. Whether States in any sort answerable, if their			{	1	4
Ships of War or Privateers become Pirates,	-	-			
3. Dangers attending Interviews of Princes,	-	-	1	7	3

Prisage. See Butlerage.

1. Prisage, its Description and Antiquity,	-	-	{	2	8	1
				2	8	9
2. Whether Merchants, Natives, or Strangers, liable to it?	-	-	{	2	8	1
	-	-				
3. At what Time due,	-	-		2	8	3
4. The <i>Londoners</i> (resident) free from it,	-	-	{	2	8	3
	-	-				
6. A <i>Londoner</i> having Wines <i>en. auter droit</i> , not exempted from it,	-	-	{	2	8	5
	-	-				
6. A <i>Londoner</i> charged, who purchased a Cargo after Arrival, &c.	-	-	{	2	8	6
	-	-				
7. Grants of Discharge, when good, or not?	-	-		2	8	7
8. Persons not charged with it, are not to custom			{	2	8	8
the Wines of Persons charged,	-	-				
9. By what Grant not discharged,	-	-		2	8	10
10. The Cinque Ports are discharged of Prisage,				2	8	11

Privateers. See Prizes.

1. They are allowable by the Law of Nature,	-	1	3	1
2. ——— and by the Law of Nations,	-	1	3	2
3. When, and why they were instituted, and have?		{	1	3
been encouraged?	-			
4. Whether they have a Right to kill the Enemy,		{	1	3
and to seize and possess their Ships and Goods?				
5. Commissions				4

THE TABLE.

	B.	Ch.	§.
5. Commissions to kill or spoil an Enemy are general or special. The general Commission,	}	I 3	5
6. Special Commissions to kill or spoil an Enemy, to whom granted; and the Rights accruing by them?			
7. Privateers not to convert Prizes to their own Use before Condemnation,	}	I 3	6
8. They are not to violate the Laws of Nations. A Case on that Head,			
9. They are not to violate Treaties; and Caution to be taken on granting their Commissions,	}	I 3	8
10. Where Prizes shall be discharged for the Cruelty of the Captors,			
11. Ships refusing to be examined; may be assaulted,	}	I 3	13
12. May in many Cases be criminal; and in some capitally punished, viz. on their becoming Pirates,			
13. Privateers severely censured,	}	I 3	15
14. Their Sovereigns not answerable if they become Pirates,			
15. What shall not make them Pirates,	}	I 4	15
16. Whether their Employers to answer Damages, if the Captain, &c. commit Piracy?			
17. Have the sole Property of what they take from the Enemy,	}	I 4	19

Privileges. See Ambassadors.

Prizes. See Captors, Commanders, Pirates, Privateers.

1. Prizes at Sea, at what Time they properly belong to the Captors,	}	I	I	12
		I	I	13
		I	I	14
		I	2	21
		I	3	6
		I	4	15
2. What Things are good Prize,	}	I	13	10
		I	I	18
		I	3	10
		I	3	11
3. Whether a Ship be Prize or not, where triable?	}	2	6	17
		I	2	21
4. Among				

THE TABLE.

	B.	Ch.	§.
4. Among whom the Spoil of Prize-Ships is to be divided, - - - - -	1	2	22
5. Taken by Privateers, to be condemned before they convert them to their own Use, - - -	1	3	6
6. Where Prizes shall be discharged for the Cruelty of the Captors, - - - - -	1	3	9
7. Where an Appeal shall suspend the Execution of the Sentence or Adjudication, or not? - - -	1	3	9
8. Where the Lading, or Part, being Prize, incurs the Forfeiture of the Vessel, or not? - - -	1	3	12
9. Merchant's Goods taken from Pirates, whether they belong to the Captors? - - - - -	1	4	21
10. Ship-papers, &c. ought to be preserved and exhibited, &c. - - - - -	1	4	23
11. How the Crews, &c. of Ships yielding without fighting, are to be treated; and of Quarter given or refused in Case of fighting, - - - - -	1	2	25
	1	13	9
	1	13	10
	1	13	12

Prohibition. See Admiralty 7. 11, 12, 13.

Property or Propriety. See Dominion, Neuter, Prizes, Wreck.

1. Property, or the Propriety in Goods, its Origin, - - - - -	1	1	3
2. Its Progress, - - - - -	1	1	3
3. Occupancy, one Method of acquiring it, - - -	1	1	3
4. Extreme Necessity seems excepted from the Laws of Property, - - - - -	1	1	4
5. Property may be divested by a just War undertaken by a Sovereign. How? when? and in what Proportion, - - - - -	1	1	5
6. Dominion or Property is established by Law and Use, - - - - -	1	1	12
7. Invasion of Property is prohibited by the Law of Nature, - - - - -	1	1	10
8. Property of Ships taken at Sea, how and when vested in, or divested out of the Captors, - - -	1	1	12
	1	1	13
	1	1	14
	1	1	15

Protection. See Commanders 12. Fugitives, Leagues, Treaties.

Protest. See Bills of Exchange, 3. 5. 13. 17.

QUARTER.

THE TABLE.

B. Ch. 5.

Q.

QUARTER. See *Commanders* 8. 11.

R.

RANSOM. See *Contribution, Pirates*, 7. 8.

Rates. See *Customs, Subsidies*.

Rebellion. See *War*.

Redemption. See *Contribution, Pirates*, 7.

Renegade. See *Aliens*.

Reprizals. See *Letters of Marque*.

1. Reprizals, what?	1 2 1
2. By whom, and for what Causes grantable, or not,	1 2 1 1 2 5 1 2 17
3. Whether founded in natural Equity?	1 2 2
4. Introduced by the Law of Nations, and for Necessity,	1 2 3 1 2 4 1 2 12
5. Androlepsia among the Grecians; particularly by the Athenians,	1 2 1 1 2 4
6. The Steps necessary to be taken, in order to obtain Letters of Reprizal,	1 2 6
7. Ordinary, in what Cases, and to whom, and by whom grantable,	1 2 7 1 2 8 1 2 15
8. In what Cases they may be revoked, or suspended, or not?	1 2 8 1 2 10
9. The granting Letters of Reprizal in the ordinary Way does not break the Peace,	1 2 9
10. Extraordinary, what? in what Cases, by whom and to whom grantable?	1 2 10
11. On a wrong Judgment in a Matter not doubtful, Reprizal may be grounded. 2. if in a doubtful Case,	1 2 13 1 2 14

12. A

THE TABLE.

	B.	Ch.	§.
12. A Precedent of Letters Patents for special Reprizals,	I	2	15
13. Men become subject to Reprizals by their Residence or Domicil,	I	2	16
14. Whether any and what Persons be exempted from Reprizals?	I	2	18
15. Whether any and what Distress may exempt Ships, &c. from Reprizal?	I	2	19
16. Letters of Reprize, in Case of Resistance, will justify Assault, and its Consequences,	I	2	20
17. The Equity to be observed in making them,	I	2	26
18. Whether they who suffer by Reprizals made, can have Contribution,	I	2	28

Request or Requisition.

1. Requisition of Justice necessary between States before Letters of Reprizal granted,	I	2	6
2. In <i>England</i> , enacted by <i>Stat. 4 H. 5. ch. 7.</i>	I	2	8
14 <i>E. 4. ch. 4.</i>			
3. Letters of Request ought to be repeated,	I	2	11

Restitution. See Prizes, Property.

1. Who may have Restitution of Goods taken at Sea? and what he ought to prove?	I	I	13
	I	I	14
	I	I	15
2. The opinion of the antient <i>Romans</i> concerning Restitution,	I	I	18
3. Restitution ought to be of the Residue in Case of just Reprizals,	I	2	16
4. Where Restitution may be, or not, of Goods taken by Pirates,	I	4	21
	I	4	22
	I	4	23

Riots. See War.

Romans.

1. Their Opinion of Restitution,	I	I	18
2. They were scrupulous in beginning War,	I	I	21
	I	I	10
3. Their Manner of denouncing War,	I	I	23
	I	2	4

Royal Fish, &c. See Seas 6.

1. Royal Fish driven ashore, to whom they belong,	I	6	12
VOL. II.	C	c	SAFE

THE TABLE.

B. Ch. §.

S.

SAFE-CONDUCT. See *Ambassadors, Leagues, Treaties.*

Sally. See *Pirates* 5. 6.

Salvage. See *Contribution.*

1. Where a Ship is lost, and the Goods saved, they are to pay Salvage,	}	2	5	4
2. Goods may be detained until Payment of Salvage,	}	2	5	4
3. What Salvage due for a Ship retaken from the Enemy,	}	2	6	17

Salutations. See *Ships* 7.

Scavage. See *Merchants* 6. 7. 8.

Scholars. See *Reprizals* 18.

Seamen and Sea-Service. See *Commanders, Mariners.*

Seas. See *Flag.*

1. Whether the Sea may fall under the Laws of Property and Government,	}	1	5	2
	}	1	5	3
	}	1	5	5
	}	1	5	6
	}	1	5	15
	}	2	16	1
2. Whether the Sea is capable of Division?	}	2	5	4
3. The Objection taken from the Instability of the Waters, answered,	}	1	5	5
4. The Antiquity of the Dominion of the <i>British</i> Seas deducted, &c.	}	1	5	6
5. Which are meant by the <i>British</i> Seas,	}	1	5	7
	}	1	5	14
6. The Effects of the King's Sovereignty in the <i>British</i> Seas,	}	1	5	10
	}	1	5	14
7. The <i>Adriatick</i> Sea appropriated by the <i>Venetians</i> ,	}	1	5	13
8. That the Passage of the Seas ought to be open ; yet liable to Restrictions,	}	2	16	1
9. Passage ought also to be had for Merchandizes,	}	2	16	5
10. Whe-		1	5	13
		2	16	2
		2	16	3

THE TABLE.

	B.	Ch.	§.
10. Whether Toll or Tribute, and for any and what Causes, may be imposed on Goods or Persons passing the Seas,	2	16	4
	2	16	5
11. Where Passengers ought to be allowed to land, and a temporary Residence in a strange Country,	2	16	6
<i>Ship. See Commanders, Flags, Freight, Letters of Marque, Mariners, Masters, Owners, Pilot, Privateers, Prizes, Reprizals, Spoil.</i>			
1. Where Ship and Lading are obliged to contribute for the Redemption of the Master, or not,	1	4	6
	2	6	13
2. Barratry in a Master of a Ship, whether a Piracy or Felony,	1	4	17
3. Whether impressing any, and what Ships be lawful?	1	6	1
	to Sect. 5.		
4. Whether Princes may impress Ships in order to traffick with them,	1	6	13
5. The Penalty where a Ship breaks the Arrest,	1	6	4
6. Fire-Ships and their Crews, how treated?	1	13	12
7. Salutation of Ships paid as a Mark of Sovereignty,	1	14	1
8. Salutation of Ships, where paid to the <i>English</i> , or <i>British</i> ,	1	14	2
9. Salutation to the King of Great Britain's Ships is a Right of his Empire,	1	14	3
10. Saluting, how? and by whom to be performed,	1	14	3
11. Neglect of Saluting, how punishable?	1	14	4
12. Where the King's Ships are to strike, or not,	1	14	5
13. How and on what Terms Ports and Forts are to be saluted,	1	14	6
14. Of Ships of War saluting their Commander in Chief,	1	14	7
15. Of Salutes to Persons of Quality coming on board, or landing,	1	14	8
16. Admirals of Foreign Nations, how to be saluted, and answered?	1	14	9
17. Merchant-Men, and Foreign Men of War, their Salutes, how answered?	1	14	10
18. The King's Forts, how? and when or not, to be saluted by his own Ships,	1	14	11
19. An Objection against fighting for Salutation, stated and answered,	1	14	12
	1	14	13
	1	14	14
20. Where			

THE TABLE.

	B.	Ch.	§.
20. Where a Ship shall belong to the Builder; and where to the Owner of the Materials, - - -	2	1	7
21. Where altering the Property of the Ship does not alter that of the Boat, - - -	2	1	8
22. Ballast is not part of the Furniture of a Ship,	2	1	8
23. Whether and when a Ship may become a Deodand? - - -	2	1	13
24. A Ship is naturalized, then sold to a Foreigner, who sells her to an <i>Englishman</i> . She is not to be deemed a Foreign Ship, - - -	2	1	15

Slavery. See *Freedom*.

Smuggling. See *Owners* 16.

Spies.

1. Their Use. They are liable to be put to Death, if apprehended. By whom, and why? - - -	2	1	13	7
	2	1	13	21

Spoil.

1. Among whom the Spoil of Ships taken is to be divided, - - -	2	1	2	22
--	---	---	---	----

States. See *Commonwealths*, *Princes*.

Subsidies. See *Customs*, *Excise*.

1. Whether Impositions may be laid without Authority of Parliament, - - -	2	12	1
	2	12	3
2. Subsidy defined. The Kinds of Subsidies. How imposed and ascertained? - - -	2	12	8
	2	12	10
3. Rates extraordinary on Wines to be paid by Strangers, - - -	2	12	9
4. Goods not rated, how to pay? - - -	2	12	10
5. The Subsidies for Cloths, - - -	2	12	11
6. Allowances to Merchants for ready Money,	2	12	11
7. Impositions on <i>French</i> Ships, &c. particularly,	2	13	1
8. On Vinegar, &c. Logwood, - - -	2	13	2
9. Impositions on Ships not being of good Force,	2	13	3
	2	13	4
10. Further Duties on various Goods imported,	2	13	5
	2	13	6
	2	13	7
11. Navi-			

THE TABLE.

			B.	Ch.	5.
11. Navigation Duties, what?	-	-	2	13	6
12. Duties on Goods exported,	-	-	2	13	9
13. Foreign Coin, Bullion, Diamonds, &c. may be			2	13	10
exported Duty-free,	-	-	2	13	10
14. Spices, by whom may be imported,	-	-	2	13	11

T.

TALES. See *Aliens*.

Tare and Tret. See *Merchants* 5.

Toll. See *Seas* 8, &c.

Trade. See *Bottomry, Customs, Freedom, Merchants.*

Trading-Voyage.

1. A Trading-Voyage described, - - - 2 4 7

Travellers. See *Reprizals* 18.

Treason. See *Commanders* 17.

Treasures. See *Seas* 6.

Treaties. See *Leagues, Neuters, Truces.*

1. Not to be violated by Privateers,	-	-	1	3	8
2. Treaty-Marine with the Dutch, 1 December			1	3	8
1674, cited,	-	-	1	3	9
3. Treaties made between England and Tunis, and			1	3	11
England and Tripoli,	-	-	1	4	4
4. Treaties providing for the Honour of the Flag,	-	-	1	5	9
5. The Ends or Uses of Treaties,	-	-	1	7	1
6. How the Propositions or Overtures for Treaties			1	7	2
are made,	-	-	1	7	2
7. Some Treaties carried on by Commission, some			1	7	3
by Interview. The Danger of Interviews of			1	7	3
Princes,	-	-	1	7	3
9. Personal Treaties usually carried on under feign-			1	7	4
ed Pretences,	-	-	1	7	4
10. Of Ceremony received and paid on Interviews			1	7	5
between Princes equal,	-	-	1	7	5

C c 3

11, Of

THE TABLE

B. Ch. §.

11. Of Ceremony on Interview between Princes unequal,	I	7	6
12. Treaties are either secret or open. Ends of secret Treaties,	I	7	7
13. Ratification of Treaties, its Necessity,	I	7	8
14. Which are the proper Places for treating,	I	7	9
15. Where it may be insisted, that a Prince shall treat personally with the Minister of another,	I	7	10
16. Of Ceremony or Precedence among Ministers at Treaties,	I	7	11
17. The Commissions or Powers of Ambassadors to be considered, whether full or not. Advice for the Conduct at the beginning,	I	7	12
18. Of Treaties of Alliance equal and unequal, offensive and defensive. Their Uses, Suspension, and Dissolution,	I	7	13
19. Leagues ought to be inrolled in <i>Chancery</i> ,	I	7	14
20. Leagues usually contain secret Articles,	I	7	14
21. The usual Intents of making Leagues,	I	7	15
22. Of Leagues for Mediation, or to procure a general Peace with Guarantees,	I	7	16
23. Matters proper to be considered with respect to Leagues offensive and defensive,	I	7	17
24. Defensive Leagues liberally construed in favour of the oppressed,	I	7	18
25. Contribution is a principal Matter in Leagues, and is difficult to be regulated,	I	7	19
26. Where Leagues are made by Ministers, Difficulties sometimes arise about ratifying them; and with what Views,	I	7	20
27. Reasons why Leagues for Enterprizes seldom answer Expectation,	I	7	21
28. The usual Causes of the Breach of Leagues,	I	7	22
29. Where Confederates are to afford mutual Succours, or not,	I	7	23
30. Where Succour may be afforded, Mediation having failed of Success,	I	7	24
31. Whether and in what manner a Successor is bound; and when?	I	7	25

32. Whe-

THE TABLE.

	B.	Ch.	§.
32. Whether Leagues remain valid, when the Prince with whom made is driven out of his Country, - - - - -	I	7	26
33. Leagues made with Kings <i>de facto</i> are valid, - - - - -	I	7	26
34. Treaties may be made with Infidels, - - - - -	I	4	4
35. The Nature of unequal Alliances with respect to Protection, &c. - - - - -	I	7	27
36. Protection is either voluntary or mercenary; remote or near, - - - - -	I	8	1
37. The mutual Obligations between the Protector and the Protected, - - - - -	I	8	2
38. Ruptures of unequal Alliances, how ordinarily occasioned? and the Remedies and Judges, - - - - -	I	8	3
39. Extraordinary Causes of the Breach of unequal Alliances, - - - - -	I	8	4
40. The giving of Hostages, its Effect, - - - - -	I	8	5
41. The Subject making a Promise without a Commission, does not bind his Sovereign, - - - - -	I	8	7
42. Whether the Contracts of Princes are void or voidable for Force or Fear? - - - - -	I	8	8
43. Leagues sometimes broken under Colour of ambiguous Words in the Treaties, but the fair Construction is most honourable, - - - - -	I	8	9
44. Whether Treaties with Princes or Republicks be most firm, - - - - -	I	8	12
45. Whether Breach of League on the one Party, justifies the Departure of the other, - - - - -	I	8	10
46. What are the true and fair Rules in construing Treaties, <i>vid. supra</i> 42. - - - - -	I	8	11
47. Exceptions tacitly implied in Treaties, which may avoid or nullify them, - - - - -	I	8	14
48. Treaties with Enemies are either temporary or perpetual, - - - - -	I	8	13
49. Temporary Treaties (or Truces) are either general or particular, - - - - -	I	9	1

Trial.

1. Whether Time of War, or not, how triable?	I	1	9
2. Whether a Ship be Prize, or not, where triable?	I	2	21

THE TABLE.

	B.	Ch.	§.
3. Where a Trial shall be in the Admiralty, and } where at Common Law, - - -	1	6	12
4. Trials by <i>Medietas Linguae</i> , were formerly by } Grant; but afterwards were extended by Act of } Parliament, - - -	3	4	1
	3	4	2
5. On Trials <i>per Medietatem</i> the Aliens need not be } of the same Country, - - -	3	4	2
6. The Form of the Writ of <i>Medietas Linguae</i> , and } how it is to be executed, - - -	3	4	3
7. Where both Parties Aliens, the Jury to be all } <i>Engliſh</i> . The like in High Treason, &c. } - - -	3	4	3
	3	4	5
8. He that would have the Trial <i>per Medietatem</i> , } &c. muſt pray it, and when? - - -	3	4	4
9. <i>Tales</i> , how grantable on the Trial <i>per Medietatem</i> } <i>Linguae</i> ? - - -	3	4	5
10. In what Caſes Aliens ſhall have <i>Medietas Lin-</i> } <i>gue</i> , or not, - - -	3	4	5
	3	4	6
11. Treafons committed in <i>Ireland</i> , triable in <i>England</i> , } - - -	3	4	7
12. A Renegado cannot be a Witneſs, - - -	3	4	8

Tribute. See Treaties.

Tripoli. See Pirates 5. 6.

1. Treaty made between <i>England</i> and <i>Tripoli</i> .	1	4	4
--	---	---	---

Triumphs. See Commanders 23.

Truce. See Treaties.

1. Truces defined and divided, - - -	1	9	1
2. Conditional Agreement for an Ally in making a } Truce, - - -	1	9	2
3. Truces which hold the Place of Peace, - - -	1	9	3
4. Whether Treaties of Truce, or perpetual Peace, } be leaſt liable to a Rupture, - - -	1	9	4
5. Truces ſometimes made to promote a Peace, - - -	1	9	5
6. Whether a Truce can prejudice the Pretenſions } in the Principal, - - -	1	9	6
7. Statutes in <i>England</i> concerning Breakers of } Leagues and Truces, - - -	1	9	7

Tunis.

THE TABLE

B. Ch. 5.

Tunis. See *Pirates* 5, 6.

1. Treaty made between *England* and *Tunis*, - 1 4 4

Tunnage. See *Subsidies*.

V.

VACANCIES. See *Occupancy*.

Venice.

1. Its Gulph described. The Dominion thereof } 1 5 13
appropriated, - - -

Voyage. See *Mariner*, *Master*, *Owner*, *Ship*, *Trading-Voyage*.

Usury. See *Bottomry*, *Exchange* 6, 7.

Utility. See *Dominion*, *Occupancy*.

W.

WAGES. See *Mariners* 19, 20, 21, 22.

War. See *Dominion*, *Letters of Marque*, *Prizes*,
Property, *Reprizal*.

1. A just War undertaken by a Sovereign, may di-	{	1	1	5
vest Property or Dominion. How? when? and		1	1	12
in what Proportion? - - -		1	1	18
		1	1	25
		1	13	10
		ibid.		
2. What are just Causes of War, or not?	{	1	1	10
		1	1	24
		1	14	16
		1	14	17
3. Publick War is <i>solemn</i> or <i>less solemn</i> , - -		1	1	6
		4. Solemn		

THE TABLE:

	B. Ch. §.
4. Solemn War, what? - - -	{ I I 7
5. Less solemn or unsolemn War, what?	{ P I 9
6. What Magistrates have Power (or a Right) to wage War, - - -	ibid. { I I 7 { I I 8
7. How the Time of War is to be tried by the Laws of England, - - -	{ I I 9
8. Where Enemies may be attacked, or not?	{ I I 16 { I I 24
9. How Enemies are to be treated in England at the Beginning of a War, - - -	{ I I 17
10. The Goods of Enemies may be spoiled,	I I 19
11. Whether a Denunciation of War is necessary by the Law of Nature? - - -	{ I I 20 { I I 21
12. Where no Denunciation and a neutral Power furnishes Contraband Goods, - - -	{ I I 20
13. Interpellation, its Use, - - -	I I 20
14. Of Accessories in a War; and the Consequence of a Denunciation with respect to them,	{ I I 22
15. Why Denunciations of War were used, - - -	I I 23
16. To supply any Enemy with warlike Stores, a just Cause of War, - - -	{ I I 24
17. Whether a neutral Power may not in some Case assist one of the Parties? - - -	{ I I 24 { I I 25
18. Whether there be any Right of War against neutral Powers? - - -	{ I 12 I
19. Of giving Quarter, - - -	{ I 13 13 { I 13 15
20. Ships and Soldiers are to assist each other against the Enemy, - - -	{ I 13 16
21. Rules concerning Pursuit, and to moderate the Fury of the Sword after a Victory, - - -	{ I 13 17 { I 13 18
22. Keeping Faith useful to prevent Wars,	I 14 17
23. Moderation recommended, - - -	I 14 17

Water-Baillage. See Merchants 12.

Weighage, Weights and Measures. See Customs 8. Masters 5.

Wharfage.

1. What it is, - - -	§ 2 9 4
	2 2 10
	2. Whar-

THE TABLE.

	B.	Ch.	£.
2. Wharfinger, when answerable, or not, for Goods,	2	9	4
	2	9	5

Wreck.

1. The Admiralty has no Jurisdiction of it. When otherwise,	1	6	12
	2	5	6
2. Whether the Property of Goods wrecked be altered? and when?	2	5	1
	2	5	3
	2	5	4
3. The Punishment of stealing Goods wreck'd; of putting out false Lights, &c.	2	5	1
	2	5	2
4. Goods wrecked are to be preserved and restored, &c. What not Wreck by the Laws of <i>Oleron</i> ?	2	5	2
	2	5	3
	2	5	4
5. When a Ship shall be said to be derelict, so as to lose the Property, or not?	2	5	4
	2	5	7
6. The King's Prerogative as to Wreck, <i>Flotsam</i> , <i>Jetsam</i> , and <i>Ligan</i> ,	2	5	5
	2	5	6
	2	5	8
7. Wreck, what it is? and what will pass by a Grant of it. What will not pass it?	2	5	6
8. Wrecked Goods, how to be claimed, &c.	2	5	8
9. Wrecked Goods, whether liable to Customs. The Reasons for the Negative. The Negative resolved,	2	5	9
	2	13	11
10. The Claim of the Admiral to Wrecks; whether good in the <i>Isle of Wight</i> , &c.	2	5	9
	2	5	10
11. When the Master is to make good the Loss, or not,	2	5	10

F I N I S

BOOKS just published by T. WALLER, in FLEET-STREET.

THE ORATIONS OF CICERO. 3 Vols. Third Edition.

CICERO DE ORATORE, or his Character and Qualifications of an Orator. Second Edition.

CICERO'S EPISTLES TO ATTICUS. 2 Vols.

CICERO'S OFFICES: Or his Moral Duties of Mankind; with his Cato Major, or the Means of making Old Age happy. His Lælius concerning Friendship. His moral Paradoxes. His Vision of Scipio, concerning a future State. His Letter on the Duty of a Magistrate.

QUINTILIAN'S INSTITUTES OF ELOQUENCE: Or the Art of SPEAKING in Public, in every Character and Capacity. 2 Vols.

The above are all translated into English with Notes, Historical, Critical, and Explanatory, by WILLIAM GUTHRIE, Esq.

THE ORATIONS AND EPISTLES OF ISOCRATES: Translated from the Greek by Mr. JOSHUA DINSDALE, and revised by the Reverend Mr. YOUNG.

HEKODIAN'S HISTORY OF HIS TIMES: Translated into English, with Notes, by Mr. HART.

THE BEAUTIES OF SHAKESPEAR; regularly selected from each Play, with explanatory Notes, from ancient and modern Authors. By W. DODD, A. B. late of Clare-Hall, Cambridge. 2 Vols.

THE SISTERS: Or the History of LUCY and CAROLINE SANSON, intrusted to a false Friend. 2 Vols.

THE FRIENDS. A sentimental History; describing Love as a Virtue, as well as a Passion. 2 Vols.

MEMOIRS OF AN UNFORTUNATE YOUNG NOBLEMAN, returned from thirteen Years Slavery in America; where he had been sent by the wicked Contrivances of his cruel Uncle. 3 Vols.

TOM FOOL'S HISTORY: Or modern Taste displayed. By GEORGE ALEXANDER-STEVENS. 2 Vols. 2d. Edit.

THE DEVIL TURN'D HERMIT: Or the Adventures of Astaroth banished from Hell. A Satirical Romance. 2 Vols.

THE FEMALE FOUNDLING: Or Virtue, Truth, and Spirit opposing every Difficulty; shewing the happy Success of constant Love. 2 Vols.

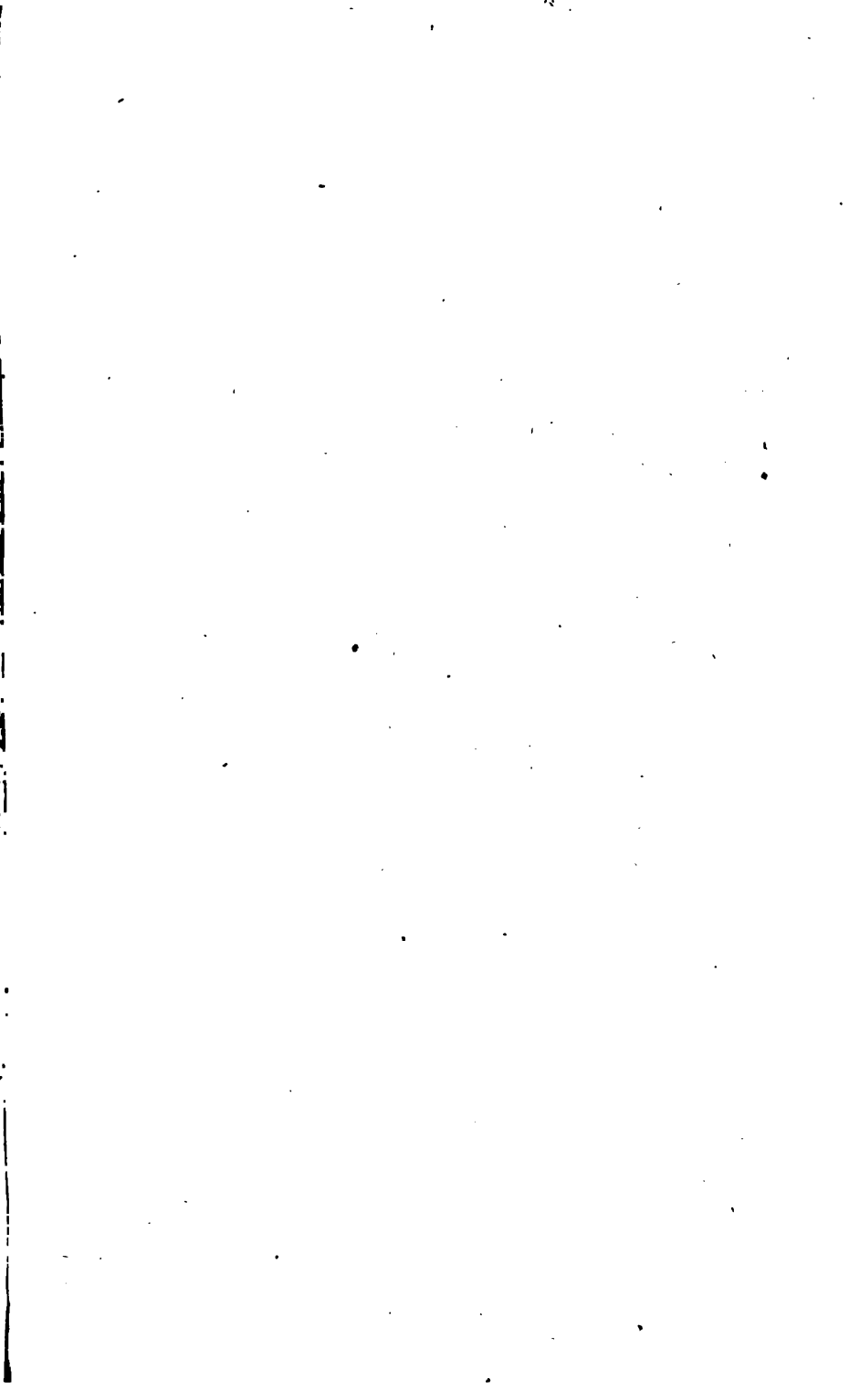
OSMER'S TREATISE on the Diseases and Lameness of HORSES; in which is laid down a proper Method of SHOEING and treating the different Kinds of FEET; with some new Observations in the Art of Farriery, and on the Nature and Difference of Horses; shewing on what Principles their PERFECTION depends, and by what Methods their BREED may be greatly improved.

TENANTS LAW: Or the Laws concerning Landlords, Tenants, and Farmers. Sixteenth Edition.

LAWS CONCERNING GAME; of Hunting, Hawking, Fishing, Fowling, &c. by WILLIAM NELSON, of the Middle Temple, Esq;







Standard Law Library



3 6105 062 384 719

